Supreme Court, U.S.
FILED

No. 10-139

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IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,
Petitioner

v.

UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Second Circuit affirmed the District Court's grant of summary judgment to Utica National, dismissing entirely Christman's claims of gender, age and disability discrimination in violation of Title VII, ADEA and ADA, respectively, and ruled that she failed to establish a *prima facie* case of discrimination and show the employer's proffered reason because of poor job performance to be pretextual.

Three questions are presented:

1. Whether the lower courts overstepped their authority as gatekeepers by ruling that Christman's evidence was insufficient to satisfy the *McDonnell Douglas* burden shifting test of gender discrimination under Title VII and age discrimination under ADEA in order to withstand a summary judgment motion?

2. Whether in ADEA discrimination case, an employer can prevail at the summary judgment stage by articulating a defense under the *McDonnell Douglas* method where the replacement employee was not hired until seven months after the adverse employment action?

3. Whether in Title VII gender discrimination case an employer can escape liability where evidence shows that the employer disciplined a male employee less severely for conduct which was more egregious than that of a female employee?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF APPENDICES iv

TABLE OF CITED AUTHORITIES xiii

OPINION BELOW 1

STATEMENT OF JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE PETITION ... 6

I. Introduction 6

A. The review of record reveals the following 6

B. The Reinsurance Accountants were treated differently in terms of their discipline, training and recognition ... 19

C. When Evolo terminated Christman's employment because of her allegedly poor job performance, he concurrently signed off on the financial statements she finalized that morning 25

Contents

Page

II. This Court's supervisory powers are needed to resolve whether the summary judgment grant to UNIG was appropriate where Christman produced the evidence showing a falsity of employer's proffered reason and raising a genuine issue as to whether this proffered reason was not the employer's true reason 27

III. This Court's supervisory powers are needed to determine whether an employer can successfully articulate a defense under *McDonnell Douglas* method where the replacement employee was not hired until seven or more months after discharge 32

IV. This Court's supervisory powers are needed to resolve a conflict between the Circuit Courts whether an employer can escape liability under Title VII where the evidence shows that a female employee was disfavored while similarly situated, male employees were receiving the preferential treatment 34

CONCLUSION 39

TABLE OF APPENDICES

Page

APPENDIX A – Summary Order of the United States Court of Appeal for the Second Circuit Decided April 29, 2010 . . . . . 1a

APPENDIX B – Decision and Order of the United States District Court, Northern District of New York Filed April 6, 2009 . . . . . 6a

APPENDIX C – Relevant Statutes 29a

APPENDIX D – Additional Material 31a

Case 09-1385-cv-DJ-JMM-RDS
U.S. Court of Appeals for the Second Circuit
Brief for Defendant-Appellee, p.1 Filed 08/07/09 31a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43 . . . . . 32a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.2-4 . . . . . 35a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting Exhibit 94 39a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR 04/13/05 Verified Complaint Exhibit 47,
p.1 . . . . . 42a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08 Stefan E. Berg, Esq.,
Retainer Agreement Attachment No.2, p.4 . . . 43a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08 12/22/07 Letter from
Stefan E. Berg, Esq. Attachment No.4 . . . . . 44a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo Exhibit 6 . . . . . 46a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13 . . . . . 50a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman Exhibit 14 . . 109a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08 Defendant's Termination Notes Exhibit 109 ..... 112a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo Exhibit 81 ..... 114a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Comparison 1999-2004 Accountant I Ratings Exhibit 15 ..... 117a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo Exhibit 28 ..... 120a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review Exhibit 17, p.2-3,5 126a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements Exhibit 100 .... 133a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/17/05 Email Exhibit 93, p.1 . . . 147a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/19/05 Email Exhibit 69 . . . . . 149a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/06/05 Memo Exhibit 34 . . . . . 152a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR Rebuttal-Plaintiff Sick & Overtime, p.21
Exhibit 87 . . . . . 158a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55 . . . . . 161a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 12/04/02 Email Exhibit 76 . . . . . 169a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review Exhibit 22, p.1-2, 4,6 . . . . . 170a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test Exhibit 75, p.1-5 . . . . . 179a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 2003 Merit Exhibit 71 . . . . . 186a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/18/05 Email Exhibit 78 . . . . . 188a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 01/22/05, 01/19/05 & 08/05/04 Emails, Exhibit 79, p.1-3 . . . . . 190a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 09/18/03 & 04/23/02 Emails Exhibit 80 194a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Discipline Exhibit 74 . . . . . 199a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II-2003 Review Exhibit 23, p.1,6,9 203a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35 . . . . . 208a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/11/05 Email Exhibit 42 . . . . . 215a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 09/20/04 Email Exhibit 33 . . . . . 217a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Reply 2004 Review, pp.1-2,59 Exhibit 31 . . . . 222a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendants JPWoods Managers Meeting
Exhibit 73 ..... 225a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant-2004 Review Exhibit 25, p.2,6 228a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant-2005 Review Exhibit 24, p.7 .. 233a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation Exhibit 88, p.1-2,
4-7 ..... 235a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant 2003 Promotion
Exhibit 72, p.3 ..... 243a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant-2003 Review Exhibit 26, p.2,6 245a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Leader's Guide: Performance Exhibit 27, p.5-6 249a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Unlawful Harassment Exhibit 82, p.1. . . . . 254a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 10/22/04 & 11/04/04 Emails
Exhibit 85, p.1-2 . . . . . 255a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 06/28/05 Email Exhibit 46 . . . . . 258a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant SDHR Extension Request Letters
Exhibit 49, p.3 . . . . . 260a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails Exhibit 90, p.1-3,
8 . . . . . 262a

Appendices

Page

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant I Job Class 9
Description Exhibit 65, p.1 . . . . . 271a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant II Job Class 11
Description Exhibit 66, p.1 . . . . . 273a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-
Motion for Protective and Confidentiality Order
Filed 09/02/08 Defendant 02/21/05 Email
Exhibit 110 . . . . . 275a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-
Motion for Protective and Confidentiality Order
Filed 09/02/08 Defendant's 02/21/05 US
Treasury, p.5 Exhibit 111 . . . . . 276a

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-
Motion for Protective and Confidentiality Order
Filed 09/02/08 Defendant's 11/01/07 Email
Exhibit 112 . . . . . 279a

2006 The Older Worker Advantage, Excerpts 282a

TABLE OF CITED AUTHORITIES

Page

Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 29, 31

Carter v. Decisionone Corp., 122 F.3d 997 (11th Cir. 1997) 33

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 29, 30

Gallo v. Prudential Residential Servs., Ltd. Partnership, 22 F.3d 1219 (2nd Cir.1994) 30

Hazen Paper Co. v. Biggins, 507 U.S. 604 (1993) 32

Jacob v. New York City, 315 U.S. 752 (1942) 32

Lynn v. Deaconess Med. Ctr.-West Campus, 160 F.3d 484 (8th Cir. 1998) 37, 38

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) 27, 32, 33, 38

O'Connor v. Consolidated Coin Operator's Corp., 517 U.S. 308 (1996) 32, 33

St. Mary's Honor Center v. Hicks, 509 U. S. 502 31

Whittington v. Nordam Group Inc., 429 F.3d 986 (10th Cir. 2005) 33

Cited Authorities

Page

Statutes & Authorities

U.S. Constitution: Seventh Amendment 3, 32

28 U.S.C. § 1254(1) 1

29 U.S.C. §621 *et seq.* 2, 3, 6, 32, 33

42 U.S.C. §2000e *et seq.* 1, 2, 3, 6, 34

F.R.C.P. Rule 11(b) 5, 28

F.R.C.P. Rule 56(c)(e)(f) 5, 29, 30

NY State Executive Law (Human Rights Law) 4

Other Citations

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OPINION BELOW

The Summary Order of the United States Court of Appeals for the Second Circuit is reproduced in the Appendix A. The order is unpublished. On April 29, 2010, the Second Circuit affirmed the Decision and Order of the United States District Court for the Northern District of New York dated March 27, 2009; the Judgment was filed on April 6, 2009. The Decision is reproduced in the Appendix B. The Petitioner did not receive the Summary Order from the Second Circuit until June 3, 2010; therefore, no petition for rehearing has been filed timely with the Court of Appeals.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Second Circuit Summary Order was filed on April 29, 2010. *See* Appendix A. The Mandate was issued on June 8, 2010. The Petition for Writ of Certiorari seeking review of the lower court's order is filed within 90 days after entry of the order.

STATUTORY PROVISIONS INVOLVED

42 U.S.C. §2000e-2 Unlawful employment practices

(a) **Employer practices**
It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of

such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(d) **Training programs**

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* App.C-29a.

29 U.S.C. §623 Prohibition of age discrimination

(a) **Employer practices**

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of

such individual's age; or
(3) to reduce the wage rate of any employee in order to comply with this chapter.

Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.* App.C-30a.

Seventh Amendment - Civil Trials

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

U.S. Constitution: Seventh Amendment. App.C-29a.

STATEMENT OF THE CASE

Grazyna H. Christman ("Christman") seeks review of the Second Circuit Summary Order that affirmed the District Court's grant of summary judgment in favor of Utica National Insurance Group, Inc. ("UNIG"). The Court found Christman's arguments related to employment termination in violations of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e *et seq.* and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §621 *et seq.*, "to be without merit." App.A-5a.

This Petition addresses whether an employer can escape liability under Title VII and ADEA, where there is evidence that the older female employee was disfavored while similarly situated, substantially younger, male employees were receiving a preferential treatment, and the employer's proffered

allegedly non-discriminatory reason for the adverse action is unworthy the credence.

UNIG [1] terminated Christman's employment on February 21, 2005. In April 2005, Christman filed a Verified Complaint with the State Division of Human Rights ("SDHR"), App.D-42a about UNIG's unlawful discriminatory employment practice in violation of the New York Human Rights Law because of age, sex and disability.

In December 2005, Christman retained Stefan D. Berg, Esq. App.D-43a. Mr. Berg filed the Complaint with the District Court in November 2006. (Dkt. No. 1, 11/16/06) After his questionable withdrawal of counsel, Christman became Plaintiff

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[1] Counsel for Defendant-Appellee maintains that Christman was "a former employee of Utica Mutual Insurance Company" and that "Plaintiff-Appellant erroneously denominated Defendant-Appellee as Utica National Insurance Group, Inc." App.D-31a. But Petitioner wishes to direct the Court's attention to the following documents indicating otherwise: (1) Letter from Nina H. Owens "to confirm the termination of [Christman's] employment and [her] employee benefits with the Utica National effective February 21, 2005." App.D-32a. (2) Letter from Clarke Peterson recognizing that "[her] employment anniversary will represent a milestone for [her] in [her] career at Utica National." App.D-35a. (3) Email from Award Center: "Happy Anniversary! Thank you for your 15 years of service with Utica National Insurance Group!" App.D-37a. (4) Confirmation of award selection: "Congratulations, Grazyna H. Christman, on your 15 Year achievement with Utica National Insurance Group!" App.D-38a, and (7) Christman's job posting – "Reinsurance Accountant" with "Utica National Insurance Group" located at "Home Office, 180 Genesee Street, New Hartford, New York 13413-2299." App.D-39a-40a.

pro se in February 2008. [2] (Dkt. No. 20, 02/08/08).

In May 2008, Christman responded to Defendant's motion for summary judgment (Dkt. Nos. 39 and 40, 05/28/08), and same day filed the F.R.C.P. Rule 56 motion for a continuance to conduct discovery. (Dkt. No. 38, 05/28/08.) In July 2008, Christman filed a motion for sanctions against Defendant's attorney for conduct violating the F.R.C.P. Rule 11(b). (Dkt. No. 46, 07/31/08.). In response, Defendant filed a cross-motion for protective and confidentiality orders in August 2008 (Dkt. No. 47, 08/08/08) and a second motion for protective order in September 2008 (Dkt. No. 52, 09/12/08.) In October 2008, the case was reassigned from Honorable Judge David N. Hurd to Judge Glenn T. Suddaby. (Dkt. No. 56, 10/02/08.) In November 2008, Christman filed two motions to compel disclosure of personnel records and cross-motion for sanctions. (Dkt. Nos. 63 and 64, 11/04/08, respectively). In March 2009, the District Court issued its Decision and Order, App.B-6a-28a granting summary judgment to UNIG and dismissing entirely Christman's claims. In April 2009, Christman filed an appeal with the Court of Appeals for the Second Circuit.

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[2] In 2007, Mr. Berg deposed Defendant on November 7th and 8th; sent a $7,500.00 bill on November 15th and on December 22nd, a letter, App.D-44a-45a that Christman had no case. From December 24, 2007 to January 22, 2008, Christman sought an explanation as to his demands to settle for under $10,000.00. For complete documentation, *see* (Dkt. No. 46, 07/31/08).

REASONS FOR GRANTING THE PETITION

The Court's supervisory powers are needed to prevent employers nationwide from escaping liability to the innocent victims of adverse employment actions in violation of the Labor Laws. Absent the Court's exercise of its supervisory powers to reverse the Second Circuit's decision, courthouse doors across the country will be closed to a host of victimized employees who are within the protected class and rely on defenses offered by the Title VII and ADEA.

I. Introduction

A. The review of record reveals the following:

Christman would have celebrated fifteen (15) years with UNIG in 2005. App.D-35a,38a. In 2002, she was moved to a newly created Reinsurance Department. App.D-46a-49a. Michael Evolo ("Evolo") become supervisor, App.D-48a and began overseeing three accountants: [3] Grazyna Christman, Accountant I, Josh Watkins ("Watkins"), Accountant II and David Raga ("Raga"), Senior Accountant. App. D-63a. Christman, who was the only female accountant supervised by Evolo, App.D-53a turned fifty in 2002. App.D-60a. Watkins and Raga were in

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[3] In November 2007, Christman testified that "[t]he accounting position had three different levels. The lowest was Accountant I, and the responsibility of the Accountant I was to somewhat work with other help, but the Accountant I wasn't responsible for entirely finishing on its own the financial statements. The Accountant I was supposed to get help and training and coaching from Senior Accountant and Accountant II." App.D-79a-80a; *see* also App.D-68a,271a,274a.

the twenties and thirties, respectively. UNIG terminated Christman's employment alleging poor job performance. On February 21, 2005, Evolo noted:

> Purpose of the meeting [in HR] was to terminate ... Grazyna [Christman]'s employment at Utica National. I reviewed the lack of noticeable improvement in her performance since the meeting Dane and I had with her on January 6, 2005. I mentioned that Year End processing was a critical time for us and that there were a number of instances where she provided incorrect accounting information to others and that these errors were unacceptable and below standard. (4) I went on to say that I gave her every opportunity to improve her performance and that she has not done so. I wrapped up my conversation by saying that we reviewed her lack of performance with HR and that we decided to terminate her employment immediately and that the decision was final. Grazyna handed out what

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(4) In 2005, UNIG apparently scrambled for Christman's errors, when it stated: "following [SDHR] Complainant's termination of employment in February 2005, Mr. Evolo discovered additional errors made by Complainant's during her employment with the Company." In 2007 deposition, Christman testified: "(...) those statements were made after [she] was fired, because the memo is dated June 28th and looks like it's an e-mail sent to Nina Owens[,]" who at 10:29 PM forwarded it further. App.D-105a; *see* also App.D-103a-107a. The e-mail's date was only three (3) days away from the third and final deadline for UNIG's SDHR response, App.D-260a-261a and coincidently would have been Christman's 15th Employment Anniversary.

> she claimed was a formal response [5] to our January 6th meeting. In addition, she made some remarks: namely that she has been under tremendous pressure from the work environment; admitted committing some errors; has never received any help from her co-workers; she claimed to have simplified many of her job tasks since coming to Reinsurance Department; and, in the last 30 days she claimed that she completed her job tasks on time [6]. App.D-112a-113a.

Prior to Evolo's supervision, all of Christman's evaluations were meets or exceeds expectations as illustrated in the table comparing her 1999-2004 performance ratings. App.D-117a-119a; *see* also App.D-93a. In 2004, Evolo evaluated Christman's performance in May and July, and rated it as "does not meet." In the nine-month review, Evolo wrote:

> Completion of the Treaty contract settlements or "true-ups" should be a priority. This is of the utmost importance, especially if UMICO is due back $$$. You

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[5] *See* Christman's 02/04/05 Memo App.D-114a-116a.

[6] During deposition in 2007, Christman testified: "[t]he job responsibility entailed specific tasks which were [her] monthly, quarterly or annual responsibility, and the timely completion, the final result. (...) The list wasn't a subject to a change. The tasks on the list were submitted once, and again, if tasks were added." Furthermore, "the last copy that [she] forwarded of the original list was in October 2004. It was right before [her] surgery. Mr. Evolo wanted to know what needed to be done in [her] absence." App.D-78a-79a; *see* also App.D-277a-278a.

> [Christman] did not process the settlements for the 2003 PPR or CEoL until after the JPWoods Account Managers meeting in early March. App.D-121a. (...) You also came perilously close to missing the deadline to file the US Treasury Report, which, had it been filed late [emphasis added], Utica Mutual would have been fined. App.D-120a.

Evolo repeated in the annual review

> Grazyna [Christman] missed a number of deadlines this past year – the 2003 PPR and CEoL treaty contract settlements or "true-ups" ($800K+) were not done in a timely manner (this settlements need to be done quickly especially if Utica is owed money back from reinsurers), (...) Grazyna also came very close to missing the deadline [emphasis added] for submitting the '03 US Treasury Report. App.D-126a; *see* also App.D-85a-86a.

But Christman's alleged oversights were corrected the following year, when she did these annual tasks on time. On January 17, 2005, Christman completed the 2004 PPR and CEoL settlements totaling $837,226.62 owed to Utica Mutual. App.D-133a-144a. Evolo approved them on January 18, 2005. App.D-133a. "[Evolo] expect[ed] that [UNIG's] Treasury items [7] will accompany the FR [Financial Reporting]

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[7] The "US Treasury items" comprised of: Excess of Risks Schedules for Utica and RFI, App.D-151a, Treasury Annual and Other States Schedules F. App.D-149a. Christman completed these items on January 18 and 19, 2005, respectively. App.D-149a; *see* also App.D-278a.

mailing on Tuesday" February 22, 2005 App.D-147a. Christman completed the US Treasury schedule on Saturday, January 19th. App.D-149a.

Evolo also wrote in January 2005 disciplinary memo:

> You [Christman] never sent your 2nd quarter premium account reconciliations to Financial Reporting, as you are required to. This was discovered when Price Waterhouse Coopers asked for them during the week of November 15th. (8) App.D-154a.

But for the 3rd and 4th quarter reconciliations, Christman corrected the alleged oversight. On January 28, 2005, she emailed Rick Semeraro in the Financial Reporting:

> This will confirm that I [Christman] dropped off this afternoon the 4Q04 reconciliations for 2180202, 2180404 and 1442002. App.D-146a.

On November 9, 2004, two (2) days before her surgery, she left the 3rd quarter reconciliations with Raga:

> I [Christman] gave to David [Raga] copies of all [emphasis added] my 3Q04 reconciliations (2180202, 1180202 and 1442002). App.D-145a.

Evolo continued in Christman's disciplinary memo:

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(8) At that time in 2004, Christman was out on medical leave of absence. "The surgery was on November 11th, and [she] was back to work on December 27th." App.D-63a.

> Before you [Christman] left for surgery, I specifically asked you to leave explicit instructions with your co-workers on how to handle your job tasks in your absence. Contrary to what I asked, you did not leave specific directions on where to send the Swiss Re premium reports. There was nothing in your file that specifically addressed premium reports. Your file did have an address, [9] however, we couldn't be sure it wasn't a lockbox address. Not sending this report on time to Swiss Re could [emphasis added] negatively impact our working relationship with them – to the point where it may result in transactional audit or even negatively impact the underwriting rates. App.D-153a-154a.

But Christman did prepare "the notes for both Natalia [Intern] and [Watkins and Raga] - hope[d] [they] find all in order." App.D-145a. On November 4, 2004, she also asked Evolo to clarify his statement that "[she] can delegate responsibility; however, [she] cannot delegate accountability," App.D-256a-257a:

> I [Christman] had explained to Natalia, Josh and David accordingly and to my best ability, what needs to be done in my absence. Please let me know HOW I CAN ASSURE that they understand what needs to be done, so that I

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[9] In her reply to January 6, 2005 disciplinary memo, App. D-114a-116a Christman explained: "(...) Swiss Re address labels for premiums and reserves bordereaux were in the file, along with Pia's [Swiss Re premium contact person] communication, which indicated that reserve reports should be mailed to another person. App.D-115a

> will not be held accountable for their potential errors, when I come back from my disability leave. App.D-256a.

In the nine-month review, Evolo stated the following about Christman's overtime:

> In closing, during year-end processing, your [Christman's] employment at Fleet Bank directly conflicted with your job responsibilities here and prevented you from committing extra time during the week (Monday through Wednesday) as well as on Saturdays during parts of year-end processing. This will not be tolerated so you must decide which position is more important – I expect that your responsibilities here at Utica Mutual will come first. I will not accept the fact that you cannot commit extra time [10] because your work schedule at Fleet will not permit it. This is not just for year-end processing, but any time during the year when additional effort is needed. App.D-125a.

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[10] Under Evolo's supervision, Christman worked the overtime as follows: "1) In 2002-2003 a total of 176.25 overtime hours was entirely allocated to handling of the year-end financial statements to assure their timely processing. It was the first year that [she] had to handle them independently. 2) In 2003-2004 [her] overtime (...) decreased to 101.5 hours thanks to [her] hands on experience from the previous year and knowledge retention. (...) 3) In 2004-2005 [her] total overtime increased to 158.75 hours. [She] worked an additional 32.25 hours in the four weeks immediately preceding [her] November surgery and a total of 118.75 hours from December 27, 2004, the day [she] returned from disability until (...) February 21, 2005

(Cont'd)

Evolo repeated in the 2004 annual review:

> Grazyna [Christman] must understand that she is expected to put in overtime when we need her. Her job at Fleet can not interfere with the Schedule's timeline or any special projects when/if they come up. App.D-130a.

But Evolo's 2007 testimony contradicts his earlier allegations about Christman's lack of overtime commitment:

> Q. On page five, there is a note about overtime, and my recollection is that there were - Grazyna [Christman] has talked to me about one incident where there was overtime to be done and she wanted to do it in the afternoon, I guess after she complete her Bank of America work or Fleet work, and you insisted that she do it in the morning. Do you recall that?
> A. I don't recall that specific incident.
> Q. Was she willing to work overtime if required?
> A. Yes. [Emphasis added] App.D-165a-166a.

In 2007, Evolo testified about Christman's allegedly poor working relationships and communications

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in order to complete a multitude of additional tasks assigned to [her] by Michael [Evolo], as well as other routine year end statements. (...) On February 19, 2005, the last Saturday before [her] dismissal on Monday morning, [she] worked alone until 8:00 PM in the evening to meet the deadlines for: the Other States Schedules F for Massachusetts and Colorado, and the US Department of Treasury Annual Schedule F." App.D-158a-160a

skills:

> Q. Page three, at the top, you said that her "working relationships with her immediate work team have become strained"; am I correct?
> A. That's what I wrote, yes.
> Q. Tell me what you were saying with those words.
> A. Well, I could just sense and see and feel that the working relationship between Grazyna [Christman], Josh [Watkins] and David [Raga] -- and that's the definition of the immediate work team. There were others within the area we were working in – was strained. I could sense that the conversations were short and curt and to the point and had undertones within them. And on a number of occasions, I made Grazyna aware of those. As a supervisor, I was trying to train her or offer assistance on how to recognize those particular situations and how to improve on those. So I could just sense it. I could just see it. I could smell it. I could feel it. It was just there. The undertones were there, just in basically back-to-back conversations with the three, I just knew it was there. App.D-162a-163a.

And furthermore:

> Q. You also said that her behavior was disruptive to the entire department. That's paragraph two. What was she doing that was disruptive?
> A. I believe in e-mails and in conversations

> she tended to [be] more argumentative and tended to cut people off midstream. If a particular person, for example David was having a conversation, rather than wait for him to finish his thought and his explanation, she would jump in disruptively and either disrupt his thinking, disrupt his thought or whatever he was trying to get across to the group. That's what I meant by "disruptive." App.D-163a-164a.

But from the onset of the Reinsurance Department, Watkins was causing a discord. In 2002, Watkins apologized for his disrespectful behavior toward Christman:

> I [Watkins] just wanted to apologize for the way I reacted towards you [Christman] yesterday. It was stupid and uncalled for. I had no right to act in such a way, and for that – I am sorry. We are a small group, and if we cannot get along and work together. . . . we will fail in our goals. Yesterday I let the team down, and if it was not for Jean – we would of failed. Once again, I apologize for my outburst. You are an incredibly dedicated worker, and in my book. . . .doing a fantastic job. I have the utmost trust in you, which encourages me as we all make this transition into our new department. Please don't be discouraged because of me and my stupidity. I am looking forward to the future of our department, because I believe that the three of us will be able to handle everything responsibly. In this future, I will make every attempt to <u>treat you with respect</u> [emphasis

> added] that a coworker should receive. If at any point, you feel that I am doing otherwise . . . . please do not feel that you cannot talk to me about it. I give you permission to do so. I ask that you please accept my utmost apology. App.D-169a.

In 2004 review, Evolo noted about Watkins's behavior:

> There have been a few occasions during the year where I [Evolo] had to address his [Watkins'] working relationship with a co-worker. He needs to continue to think through his actions and responses before delivering them to this person. He should evaluate how they will be perceived and adjust accordingly. App.D-175a.

Back in 2002 at the employer's request, Christman took the Harrison InnerView personality test. The test results (92 consistency score) present a different picture of Christman's personality traits:

> [Q]uite capable of being tactful (...) quite helpful and conscious of others' needs (...) has a good balance between sticking to opinions and being open-minded (...) neither outgoing nor reserved, but balanced in between the two points (...) extremely optimistic (...) fairly willing to collaborate with others with regard to making important decisions (...) tolerant of people who are indirect or evasive (...) unconcerned about influencing others (...) fairly empathetic and warm (...) fairly flexible and adaptable to changes. App.D-179a-185a.

The test results contradict Evolo's comments in Christman's nine-month review:

> I [Evolo] have spoken to a number of outside customers that have expressed similar concern for your [Christman's] abrupt tone and tenor and your unwillingness to be flexible. I have heard comments such as "rude and demanding" and "its all about Grazyna." You must improve your ability to work with others. Your attitude is easily translated as confrontational, unwilling to listen or compromise, and selfish. App.D-122a-123a.

And his comments in 2004 annual review:

> I have spoken to a number of Grazyna's internal and external customers and some have expressed similar concern for her abrupt tone and tenor, and her unwillingness to be flexible. App.D-129a.

In 2007 deposition, Evolo testified about concerns from internal and external customers' regarding Christman's poor communication skills:

> Q. Okay. And you added that internal and external customers compressed concern about this to you?
> A. Yes.
> Q. Can you elaborate on what kind of concerns that were expressed?
> A. As a supervisor, I made phone calls to some of her customers that she would have dealt with on a regular basis, just to get some of their feedback. And during

> those phone calls, I was told that there was concern in the way that Grazyna was carrying on her conversation with those individuals. As I've outlined in her performance review, those concerns were expressed with her abrupt tone and tenor and her unwillingness to be flexible during those conversations.
>
> Q. What do you mean "willingness to be flexible"?
>
> A. I don't have details, per se, of those conversations. I don't recall what those where. But at the time, probably what happened was there may have been a conversation with a particular reinsurer where there was information being requested, either from us of them or them of us. And quite honestly, she could've been asking for information and the reinsurer may not have been able to get to it right away, and based on her tone and tenor, they may have construed that to be her unwillingness to be flexible on some parameters they may be faced with. I don't recall exactly. App.D-164a-165a.

But Christman's emails give an opposite picture of the communication skills when dealing with her customers, [11] as illustrated by samples of her emails between 2002 and 2005. First, 02/18/05

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[11] Rick Beidleman (Evolo's supervisor prior to Dane Austin) recognized Christman's good interpersonal skill; in February 2003, he wrote: "[t]his outcome [contingent commission] is the result of a lot of hard work by Grazyna [Christman] as well as good interactions with the folks at HSB [Hartford Steam Boiler Insurance]." App.D-186a-187a.

emails to and from Shaunastar Douglas, an auditor at Price Waterhouse Coopers App.D-188a-189a. Second, 01/22/05 email to Robert Dicks, UNIG's VP General Auditor App.D-190a-191a. Third, 01/19/05 email to Ed Chin, JPWoods Accountant. App.D-191a-192a. Fourth, 08/05/04 email to Pat Thompson, her contact at American Re. App.D-192a-193a. Fifth, 09/18/03 emails from and to Gian Metzger at GeneralCologne Re, App.D-194a-197a and sixth, 04/23/02 email to and from Cheryl DeAngelo, UNIG's Underwriter. App.D-197a-198a.

B. The Reinsurance Accountants were treated differently in terms of their discipline, training and recognition.

In August 2003, Evolo put Watkins on probation:

> There have been a number or [of] instances where [redacted] [Watkins] didn't take time to reconcile or verify his work before submitting it. (asbestos billings to JPWoods, AAD Summary, E & O Settlement billing, GenRe Profit Sharing calculation and the AMRECO journal entry error). These have all proven to be costly errors. [12] App.D-204a.

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[12] In more detail, Watkins's 2003 errors entailed: (1) Reinsurance Asbestos Claims billings, (2) Annual Aggregate Deductible (AAD) Summary; (3) Errors & Omissions (E&O) Treaty Settlement billings; 4) Quarterly Profit Sharing (Contingent Commission) calculations for General Reinsurance Corp. (GenRe), located in Stamford, CT; (5) Asbestos Claims, journalized in the General Ledger for American Mutual *(Cont'd)*

According to Evolo:

> Some of the missteps that have occurred should be considered learning experiences [emphasis added], (13) however, [redacted] [Watkins] should understand that his credibility has been strained and he must work to rebuild his reputation. Accurate reinsurance accounting is vital and [redacted] needs to realize his work is

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Reinsurance Company, (AMRECO) located in Lisle, IL. The first three items were sent monthly to the broker in New Jersey, John P. Woods, who further billed on behalf of UNIG the individual Reinsurers - participants in various Reinsurance Treaties. (As submitted in Christman's 2005 SDHR Rebuttal).

(13) Christman referred to this quote in 2007 deposition: "Several studies have shown that managers sometimes engage in age discrimination without being aware of it. Years, back, in 1977, a survey conducted of 1,570 subscribers to the *Harvard Business Review* sought to assess the degree to which age discrimination affected managerial decisions.[1] The respondents were divided into two groups, and each group was asked to evaluate a series of problems involving poor worker performance and decisions regarding training and promotions. The problems presented to the two groups were virtually identical except for the age of the employee involved in the incident. One-half dealt with a younger worker and the other half with an older one. In each of the situations, the older employee fared worse in the respondents' evaluations, regardless of the person's qualifications. When both an older and a younger worker were failing to adequately perform the job, the older employee was seen as resistant to change, and the respondents recommended reassignment. Those surveyed believed, however, that the younger worker could benefit from an 'encouraging talk.' [emphasis added]. Similarly, the older, equally qualified worker was perceived as less motivated to

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> extremely important to the integrity of our [UNIG's] financial statements. App.D-207a.

Evolo took Watkins off probation in January 2004. App.D-199a. In 2005, he again put him on probation, [14] and extended his period of time to improve from ninety (90) days, App.D-207a to twelve (12) months, App.D-201a:

> This is a follow up to our meeting on Friday, May 13th, and is considered a formal written warning" regarding the incident that took place during the week of May 9th. As discussed, you produced an exhibit that was forwarded to Holborn Intermediaries that contained inaccurate information. Specifically, you overstated our catastrophe losses for 1992 by $41M dollars (...) Should there be another incident involving inaccurate information within the next 12 months [emphasis added] further disciplinary action may result. App.D-200a-201a.

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keep up with the changing technology, as less creative, and as less able to deal with job-related stress. Age bias has been around for a long time. Gordon F. Shea and Adolf Haasen, *The Older Worker Advantage, Making the Most of Our Aging Force* (Connecticut: PRAEGER, 2006), Chapter 4, pp. 43-44; quoting: [1] B. Rosen, "Management Perceptions of Older Employees," *Monthly Labor Review* 10, no. 5 (1978): 33-35. App.D-283a-284a.

[14] UNIG's "[d]iscipline is administered in accordance with the level of the offense. (...) Levels of discipline include: 1. Verbal Warning 2. Written Warning 3. Disciplinary Probation 4. Temporary lay-off without pay 5. Demotion 6. Termination." App.D-201a.

But Evolo gave Christman only thirty (30) days to improve the allegedly poor performance, when on January 6, 2005 he put her on probation. App.D-157a; *see* also AD-209a-210a. Only a month and a half later he terminated her employment on February 21st. App.D-112a. Evolo followed up with Nina Owens from Human Resources on Watkins's improvement, App.D-199a but there was no follow up [15] on Christman's progress. App.D-215a-216a; *see* also App.D-99a.

Evolo declined Christman participation in the JP Woods Managers Meeting held every March in New Jersey. App.D-225a-227a. In April 2004, Evolo wrote in Raga's annual review:

> [Redacted] [Raga] has attended the reinsurance claims audits and has visited JPWoods' office in order to gain first hand knowledge of their work process. App.229a.

In July 2004, Evolo wrote in Watkins's review:

> Interactions with JPWoods have afforded Josh [Watkins] a better understanding how our organizations work together. [Redacted] has spent time with their Accounting and Claims department and this experience has given [redacted] a better understanding of

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[15] In 2007 Deposition, Christman testified that: "[w]hen [she] escalated the [performance] issue in August of 2004, to Rick Beidleman, at Michael's recommendations to keep in mind the job ramifications if [she] go[es] above and [she] bypass[es] them, it really didn't take [her] anywhere. It wasn't addressed by the company. App.D-102a; *see* also App.D-217a-221a and D-223a-224a.

> how their respective functions fit with ours. App.D-174a.

But in Christman's 2004 review, he stated:

> Grazyna has learned most aspects of her current job, however, during the year there were occasions where she didn't understand what should have been done. Common sense (understanding) should prevail when she is completing her tasks. App.D-127a.

Evolo denied Christman these "first hand" training opportunities extended to the younger, male co-workers, who accompanied him on trips to New Jersey: Watkins twice in 2003 and 2004, and Raga in 2004.

Evolo denied Christman the flexibility extended to Watkins and Raga related to completion of Associate in Reinsurance (ARe) designation. In 2004, Evolo gave Watkins until "December 2006" to complete ARe. App.D-178a. Raga's initial timeline of "December 2003," App.D-248a was extended in 2004 to "December 2005," App.D-232a and once again in 2005 to "December 2008." App.D-233a. But in Christman's review, Evolo wrote:

> I have asked Grazyna to continue her pursuit of the ARe designation. After she failed ARe 141 in November '03, I recommended that she retry right away. This was not done and reflects her lack of interest and commitment. App.D-127a.

After Christman withdrew from ARe study in 2004 because of disability leave, Evolo expected she sign

up in January 2005 right after her surgery. App.D-235a; *see* also App.D-236a-242a.

When Christman and Raga failed ARe exams in the fall of 2003 and 2002, respectively, Evolo rewarded Raga with promotion to Senior Accountant in May 2003, App.D-243a-244a for "(...)be[ing] a member of the Reinsurance team for only 6 months and (...) becom[ing] exposed to many facets of Reinsurance (...) [having] fundamentally sound accounting background from his 13 years [16] of experience [17] in the accounting department (...)." App.D-245a. But Evolo bypassed Christman for promotion, even though in 2003 by a special project she worked on, she earned UNIG 1/3 million dollars in long outstanding contingent commission from Hartford Steam Boiler (HSB) Insurance Company. In February 2003, Rick Biedleman, Senior VP-Reinsurance, recognized her accomplishment in the e-mail to UNIG's upper management:

> At last we have finally come to agreement with HSB on the contingent payment for the

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[16] To Christman's knowledge, Raga and she became employed by UNIG in 1990, May and June, respectively. The announcement in May 2003 Flash, UNIG's monthly publication listed Raga as "[a] Utica employee since 1989." App.D-243a.

[17] UNIG's Leader's Guide indicates that inaccurate rating because of length of service should be avoided, "[it] is the tendency to overrate long-service employees and to underrate short-service employees. The supervisor/manager assumes that the longer an employee performs a job the more knowledgeable and proficient the employee will become. (...) In a performance review, how an employee performs his/her job is the object of the evaluation, not his/her length of service on the job. App.D-250a-251a.

> years '98 thru '02. Due in very large part to the initiative and perseverance of Grazyna Christman we have developed numbers and agreed with HSB on a contingent payment to us in the amount of $330,500.This compares, I am told to some $85,000 we have accrued for the payment. This outcome is the result of a lot of hard work by Grazyna as well as good interactions with the folks at HSB. And, it clears up contingent calculations that go back as far as the 7/1/98-12/31/99 profit contingent period. App.D-186a-187a.

Evolo subjected Christman to the economic harassment, [18] when he denied her the annual salary increase in 2004 and terminated her employment in 2005.

C. When Evolo terminated Christman's employment because of her allegedly poor job performance, he concurrently signed off on the financial statements she finalized that morning.

On February 21, 2005 at 1:28 PM, Evolo advised the Financial Reporting that both US Treasury reports were ready for mailing, awaiting a signature from George Wardley, UNIG's Secretary and Notary

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[18] UNIG's web-based training offered to all employees in 2004, defined the economic harassment as "(...) harassing behavior that results in a monetary loss for an employee or significant changes in workload or work assignment. Economic harassment requires that the threat of job loss or the promise of job benefits actually result in some type of employment action, such as termination, promotion, demotion, or reassignment to a considerably different job. App.D-254a

Public seal from Fran Richards:

> I believe Dave [Raga] left you a v[oice]-message regarding this [Christman's termination] matter. We are just waiting for George and Fran to sign. Please let us know if you need anything further. App.D-275a-276a; *see* also App.D-149a-151a.

As of February 21st, the only outstanding annual item on Christman's task list, App. D-150a was the Commerce Survey (due March 31, 2005). App.D-273a. On February 19th, Christman asked Evolo:

> It [Commerce Survey] is quite time consuming due to manual process. I will start working on it right away, along with catching up on the monthly tasks. Will you approve overtime, if needed? App.D-150a.

But UNIG focused on selected documents only to justify Christman's employment termination as indicated by UNIG's counsel:

> The documents are limited to the period of time from the date of Ms. Christman's written warning on January 6, 2005 through her termination date of February 21, 2005 (...) to focus your attention on her job performance during that period of time in order to justify that termination was the appropriate employment decision (as opposed to further warnings, probation, suspension, etc.). (...) There is a large volume of paperwork in connection with this case so I [DeTraglia] am trying to narrow the scope [emphasis added] as much as possible

for now. App.D-279a-280a.

II. This Court's supervisory powers are needed to resolve whether the summary judgment grant to UNIG was appropriate where Christman produced the evidence showing a falsity of employer's proffered reason and raising a genuine issue as to whether this proffered reason was not the employer's true reason.

On review *de novo*, the Court of Appeals for the Second Circuit found no error and "affirm[ed] substantially the reasons stated by the district court in its March 27, 2009 summary judgment order." App.A-4a. In granting the summary judgment to UNIG, the District Court for the Northern District of New York concluded that Christman has not established a prima facie case of employment discrimination under *McDonnell Douglas* burden shifting test, and

> [t]he record evidence demonstrates that Plaintiff [Christman] fails the second prong of the test in that she was not satisfactory performing her job at the time of her termination. Plaintiff also fails the fourth prong because the evidence establishes that Plaintiff's supervisor filled Plaintiff's position by employing a woman over forty (40) years of age. App.B-24a.

The District Court also concluded that UNIG's decision was based on a legitimate nondiscriminatory reason, thus not gender or age-based:

> Defendant offered a non-discriminatory

> reason for her [Christman's] termination-i.e. poor work performance-and she has not demonstrated any record evidence that this allegation of poor work performance is a pretext for discrimination. App.B-22a.

This Court's supervisory powers are needed to resolve whether Christman's record amply presents genuine issue of material fact. Christman's vast evidence [19] overwhelmingly contradicts the evidence presented by UNIG about her allegedly unsatisfactory job performance. For example, in regard to Christman's lack of performance improvement, *see* JPWoods PPR and CEoL 2003 and 2004 annual settlements -- *compare* App.D-121a,126a,133a-144a *with* Exhibits 28,p.1, 17,p.2 and 100,pp.1-5, attached to the Additional Statement of Material Facts in Plaintiff's Rule 7.1 Response to Defendant's Statement of Material Facts, ¶97 and ¶¶98-99, respectively. (Dkt. No. 40, 05/28/08). In regard to Christman's poor working relationships and communications skills, *see* Evolo's testimony -- *compare* App.D-162a-165a,169a,179a-185a,188a-198a *with* Exhibits 55,pp.36-37, 76, 75 and 78-80 attached to Plaintiff's Additional Statement of Material Facts, ¶49, ¶51, ¶53, ¶50, ¶47 and ¶54, respectively. (*Id*). Or in regard to Christman's lack of overtime commitment, *see* Evolo's testimony --

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[19] Christman "is not an attorney, has no legal coach and does not know all technicalities, but has been diligent in complying with pertinent Local and Federal Rules. Stefan D. Berg, Esq. represented Plaintiff [Christman] initially until the questionable withdrawal of counsel in February of 2008." *See* Christman's F.R.C.P. Rule 11 Motion for Sanctions against Defendant's Attorney for Conduct Violating Rule 11(b) (Dkt. No. 31, 07/31/08).

compare App.D-125a,130a,165a-166a *with* Exhibits 28,p.3, 17,p.3 and 55,p.38, attached to Plaintiffs Additional Statement of Material Facts, ¶63; ¶62 and ¶64, respectively. (*Id.*).

Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." F.R.C.P. 56(c). The District Court stated that "a dispute of fact is 'material' if it 'might affect the outcome of the suit under the governing law.' *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)" and "a dispute of fact is 'genuine' if 'the [record] evidence is such that a reasonable jury could return a verdict for the nonmoving party.' *Id.*" App.B-15a-16a. But the Court of Appeals apparently overlooked its own ruling that "[t]he role of the Court is to determine whether there are any genuine issues of material fact to be tried, not to decide them. *Gallo v. Prudential Residential Servs., Ltd. Partnership*, 22 F.3d 1219, 1224 (2d. Cir.1994). In considering the motion, the Court must resolve ambiguities and draw all reasonable inferences in favor of the nonmoving party. 477 U.S. at 255. A District Court must grant summary judgment if there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). These statements, however, were not absolute as the *Celotex* Court noted that,

> We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment. Obviously, Rule 56 does

> not require the nonmoving party to depose her own witnesses. Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves, and it is from this list that one would normally expect the nonmoving party to make the showing to which we have referred." 477 U.S. at 324.

Christman has presented enough evidence to defeat summary judgment on the issue of pretext. [20] The record undoubtedly brings forth a genuine issue of material fact as to first, the veracity of Evolo's testimony (*compare* App.D-125a,130a *with* App.D-165a-166a, *see* also App.D-158a-160a). Second, whether Christman's job performance has indeed declined (*compare* App.D-121a,126a *with* AppD-133a-144a; *compare* App.D-120a,126a *with* App.D-147a,149a, *see* also App.D-149a-151a; *compare* App.D-154a *with* App.D-145a-146a; *compare* App.D-153a-154a *with* App.D.115a,145a; *see* also 256a-257a). Or third, whether her working relationships and communications skills were indeed poor (*compare* App.D-162a-164a *with* App.D-169a,175a; *compare* App.D-122a-123a,129a,164a-165a *with*

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[20] In 2007, Christman testified that Evolo did not make age related comments directly to her or in front of other employees when she was present, App.D-61a and referred to "[t]he overall perception (...) that the older employee is not as effective as the younger one, is not a computer whiz. App.D-59a. In 2004, Evolo sent Christman an ambiguous email containing Microsoft Excel charts produced by Watkins. In 2005, Evolo wrote in another email that "[he] shouldn't have to dictate [her] what needs to be accomplished as [she has] been around long enough to know." App.D-262a-270a.

App.D-179a-185a,188a-198), thus generating a factual dispute regarding the truth of UNIG's proffered reason.

In *St. Mary's Honor Center v. Hicks,* 509 U. S., 502, 511, the Supreme Court stated:

> The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons [will permit the trier of fact to infer the ultimate fact of intentional discrimination,][.]

This Court's supervisory powers are needed to resolve whether the lower courts overstepped their authority as gatekeepers when they decided the credibility issues instead of determining only whether there is evidence in the summary judgment record generating a genuine issue of material fact for trial. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[:] (...) The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." 477 U.S. at 255. This Court's guidance is much needed, because an improper summary judgment grant to UNIG not only allows the employer to escape the liability for adverse employment action in violation of the Federal Laws, but also deprives Christman of her right to trial by jury. "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal

jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen (...) should be jealously guarded by the courts." *See Jacob v. New York City,* 315 U.S. 752, 752-753 (1942).

III. This Court's supervisory powers are needed to determine whether an employer can successfully articulate a defense under *McDonnell Douglas* method where the replacement employee was not hired until seven or more months after discharge.

The District Court concluded that "Plaintiff [Christman] (...) fails the fourth prong because the evidence establishes that Plaintiff's supervisor filled Plaintiff's position by employing a woman over forty (40) years of age." App.B-24a.

In a discharge case, the elements of *McDonnell Douglas* are modified since *McDonnell Douglas* involved a failure to hire. The courts have modified the elements in an ADEA discharge case as follows: (1) plaintiff was a member of the protected class; (2) was meeting the employer's legitimate expectations in performing the job; (3) was discharged or suffered an adverse employment action; and (4) was replaced by someone substantially younger or similarly situated employees of comparable qualifications who were substantially younger were treated more favorably. *See e.g., O'Connor v. Consolidated Coin Operator's Corp.,* 517 U.S. 308, 311 (1996); *Hazen Paper Co. v. Biggins,* 507 U.S. 604, 609 (1993).

During 2007 deposition, Evolo testified that he "hired [someone] to replace Christman after her termination of employment[,]" that "Margaret Krug

filled that position[,]" that he "[knew] her gender at the time[,]" that Krug was "obviously, a woman[,] [a]nd at the time (...) [he knew] she's over 50." [21] AD-168a.

In *O'Connor*, the Supreme Court clarified the fourth element of the prima facie model in discharge cases in regard to the age difference between the plaintiff and a replacement and held that plaintiff need only show that the replacement was "substantially younger." *Id.* at 312. The Supreme Court explained that the *McDonnell Douglas* elements are meant to be reliable indicators of age discrimination. In other words, the age difference between the plaintiff and a replacement provides a more accurate indicator of age discrimination than a comparison of whether the plaintiff is over age 40 and the replacement is younger than age 40.

A question, however, arises whether an employer can escape the liability for adverse employment action in violation of ADEA where the replacement employee was not hired until seven (7) or more months after the discharge (Christman's job posting was open as of 9/25/2005), App.D-41a; the job was not posted for nine (9) weeks after her discharge, and coincidently was posted two (2) weeks after she filed a Verified Complained with the State Division of Human Rights on 4/13/2005, App.D-42a; UNIG

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[21] In *Whittington v. Nordam Group Inc.*, 429 F.3d 986, 996 (10th Cir. 2005), the Court reasoned that all circumstantial evidence should be considered by the jury for it to weigh its value, rather than setting arbitrary numerical [age] limits. In *Carter v. Decisionone Corp.*, 122 F.3d 997 (11th Cir. 1997), the 3-year gap sufficient to permit an inference of age discrimination.

posted the job on 4/27/2005. App.D-39a.

This Court's supervisory powers are much needed to ensure that the employees within the protected class can recover damages from employers who by adverse employment action caused their injury, but who are attempting to dissemble afterwards.

IV. This Court's supervisory powers are needed to resolve a conflict between the Circuit Courts whether an employer can escape liability under Title VII where the evidence shows that a female employee was disfavored while similarly situated, male employees were receiving the preferential treatment.

The Second Circuit's ruling unsettles the protection provided to the employees by the Federal Law; therefore the public interest requires this Court's review. Under Title VII, Plaintiff may establish a prima facie case of unlawful discrimination by showing that an employer treated similarly situated employees outside the protected class more favorably. By affirming the District Court's conclusion that UNIG "offered a non-discriminatory reason for [Christman's] termination[.]" App.B-22a, the Second Circuit dismissed Christman's allegation that UNIG discriminated on the basis of her gender in violation of Title VII.

As proof of pretext -- in addition to generating a factual dispute about truthfulness of UNIG's proffered "because of poor performance" reason -- Christman also presented the evidence that UNIG

disciplined male employee less severely than she was disciplined for conduct that was more egregious than hers. Watkins was put on probation in 2003, subject to ninety (90) days performance follow up. App.D-204a,207a. Watkins was put again on probation in 2005, subject to twelve (12) months follow up. App.D-200a-201a. Christman was put on probation in January 2005, subject to thirty (30) days follow up, App.D-157a and was terminated only forty six (46) days later, App.D-112a with no follow up done. App.D-99a,215a-216a.

Christman points to the supervisor's favorable treatment of two male employees. When Raga failed ARe exam in November 2002, he was promoted to Senior Accountant in May 2003. App.D-243a-244a. When Christman failed the same exam in November 2003, she received a nine-month review in May 2004, followed by unsatisfactory July 2004 performance rating that deprived her of an annual salary increase.

To gain the first-hand experience of reinsurance operations, the male employees accompanied the supervisors (Evolo and Beidleman) to the annual JPWoods Managers Meetings in New Jersey. App.D-225a,227a. Watkins attended the meeting twice, in 2003 and 2004; Raga once in 2004. App.D-174a,229a. By not being selected in 2004, Christman was denied the training opportunities provided to both male employees. App.D-127a.

The male employees were given flexibility to complete Associate in Reinsurance (ARe) designation. For Watkins, to complete by "December 2006" was assigned in 2004. App.D-178a. Raga's initial timeline of "December 2003," App.D-248a was extended in 2004 to "December 2005," App.D-232a and once again

in 2005 to "December 2008." App.D-233a. Christman was required to complete the designation immediately. The fact that she did not sign up after the exam failed in November 2003 or in January 2005 right after her surgery, was perceived by her supervisor as "lack of interest and commitment." App.D-127a.

Christman has produced sufficient evidence to at least create a factual dispute as to whether the differences in disciplinary history of the male employee and hers were due to the gender-based discrimination. The record shows that Christman had no unsatisfactory performance reviews in the twelve (12) years prior to when Evolo and Beidleman (the latter replaced by Austin in December 2004) became her supervisors. App.D-117a-118a. The record also shows that although the supervisors were quick to discipline Christman and terminate her employment, App.D-112a,157a they were lenient toward disciplining Watkins when they gave him a second written warning in 2005 for the same type of errors that put him on probation in 2003. Erroneous financial statements leaving the company twice appear to be particularly egregious misconduct for an Accountant. In 2003, Watkins made gross errors in the financial statements forwarded to JPWoods, UNIG's broker who in turn billed the individual reinsurers on its behalf. App.D-204a. In 2005, Watkins overstated UNIG's losses by $41 million in the financial statement sent to Holbrook Intermediaries. App.D-200a-201a. Watkins's errors "have all proven to be costly errors." App.D-204a. The errors allegedly made by Christman occurred internally during preparation of financial statements. The gravity of Watkin's infraction is further exacerbated by the fact that his job was

higher grade. Watkins, as Accountant II, was expected to prepare financial statements through proper understanding and application of statutory accounting principles, and work under general supervision. App.D-273a. Christman, as Accountant I, was expected to assist with the preparation of financial statements and work under direct supervision of manager. App.D-271a. Watkins's actions seem to at least constitute the same kind of "serious lack of appropriate accounting credibility" that resulted in Christman's discharge.

This Court's supervisory powers are needed to resolve a matter where the Second Circuit has entered a decision in conflict with decision made by the Court of Appeals for the Eighth Circuit. In *Lynn v. Deaconess Med. Ctr.-West Campus,* 160 F.3d 484 (8th Cir. 1998), Michael Lynn alleged that Deaconess terminated him on the basis of his gender. The Court stated:

> As proof of pretext, Lynn presented evidence that Deaconess disciplined female nurses in the Rehab Unit less severely than he was disciplined for conduct that was more egregious than his. Primarily, Lynn points to his supervisors' favorable treatment of another registered nurse in the Rehab Unit, Karen Mohr. *Id.* at 487. (...) Lynn has produced sufficient evidence to at least create a factual dispute as to weather the differences in disciplinary history of female nurse and his were due to gender discrimination. The record shows that Lynn had no reports of work performance deficiencies in the time period prior to when Shanks and Ford became his supervisors.

> (...) The record also shows that although Ford and Shanks were quick to verbally counsel Lynn and to issue him Letters of Understanding, it took numerous reports and several months before Mohr was verbally counseled about her sleeping problem. (...) Sleeping on the job appears to be particularly egregious misconduct for a nurse on duty. The gravity of Mohr's infraction is further exacerbated by the fact that sometimes Mohr would be the only nurse present. *Id.* at 488. (...) Mohr's actions seem to at least constitute the same kind of "serious lack of appropriate nursing judgment" that resulted in Lynn's discharge. Thus, we find sufficient evidence to create a genuine fact issue as to whether the reason proffered by Deaconess was pretext. *Id.* at 489.

The Eighth Circuit reversed the District Court's judgment, concluding that

> Lynn presented evidence sufficient to create a reasonable inference that Deaconess's proffered reasons for discharging him were mere pretext for intentional discrimination. Under the *McDonnell-Douglas* framework, this is enough to survive a motion for summary judgment. Although Deaconess may ultimately be able to offer a plausible explanation for its treatment of Lynn and its other nurses, these are matters to be decided at trial and not by summary judgment [.] *Id.*

This Court's intervention will serve the national interest ensuring that the provisions of Title VII are

fairly and accurately applied in states across the country to promote a just application of the Labor Law.

CONCLUSION

For all the foregoing reasons, the Petition for A Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A – SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DECIDED APRIL 29, 2010

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATIONS TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan Unites States Courthouse, 500 Pearl Street, in the City of New York, on the 29th day of April, two thousand ten.

PRESENT: **DENNIS JACOBS**,
Chief Judge,

Appendix A

JOSEPH M. McLAUGHLIN,
ROBERT D. SACK,
Circuit Judges.

[Oval stamp] UNITED STATES COURT OF APPEALS FILED APR 29 2010 CATHERINE O'HAGAN WOLFE, CLERK SECOND CIRCUIT

- -x

Grazyna H. Christman,
Plaintiff-Appellant,

-v.- 09-1385-cv

Utica National Insurance Group,
Defendant-Appellee.

- -x

FOR APPELLANT: Grazyna H. Christman, pro se, Utica, NY

FOR APPELLEE: Joseph A. DeTraglia, Getnick Livingston Atkinson & Priore, LLP Utica, NY

1

Appeal from a judgment of the United States District Court for the Northern District of New York (Suddaby, J.).

UPON DUE CONSIDERATION IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court be **AFFIRMED**.

Appendix A

Grazyna H. Christman appeals from a judgment entered April 6, 2009 in the United States District Court for the Northern District of New York (Suddaby, J.). Christman claims that she was terminated from her employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. In the orders relevant to this appeal, the district court granted summary judgment to the defendant's on all claims; and denied Christman's motion's for discovery under Federal Rule of Civil Procedure 56 (f), and for sanctions under Federal Rule of Civil Procedure 11 (b). We otherwise assume the parties' familiarity with the underlying facts, the case's procedural history, and the issues on appeal.

We review the district court's summary judgment order de novo. E.g. Miller v. Wolpoff & Abramson, L.L.P., 321 F.3d 292, 300 (2d Cir. 2003). Summary judgment is

appropriate where, drawing a factual inferences . . . in favor of the non-moving party [,] . . . there are no genuine issues of material fact and . . . that moving party is entitled to judgment as a matter of law." Id. (citation omitted). On review, we find no error, and affirm for substantially the reasons stated by the district court in its March 27, 2009 summary judgment order.

Respecting the district court's rule 56 (f) ruling, we review for abuse of discretion, Gualandi v. Adams, 385 F.3d 236, 244-45 (2d Cir. 2004); and find none. Christman failed to support her motion with an affidavit describing: (1) what facts are sought and how they are to be obtained; (2) how these facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant's efforts were unsuccessful." Id. at 244.

Respecting the district court's Rule 11(b) ruling, we likewise review for abuse of discretion, Gurary v. Winehouse, 235 F.3d 792, 798 (2d Cir. 2000);

and find none.

2

Christman has not shown (as she asserts) that the defendant's filings mischaracterized the evidence in the record or were submitted for any "improper purpose," Fed. R. Civ. P. 11 (b) (1). We have considered Christman's remaining arguments and find them to be without merit. The district court's judgment is accordingly **AFFIRMED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE,
CLERK
s/
[Seal]
UNITED STATES
COURT OF APPEALS
SECOND CIRCUIT

3

APPENDIX B – DECISION AND ORDER OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK FILED APRIL 6, 2009

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

[Stamp] U.S. DISTRICT COURT-N.D. OF N.Y.
COPY FILED MAR 27 2009 AT__O'CLOCK__
LAWRENCE K.BAERMAN, CLERK-BINGHAMTON

GRAZYNA H. CHRISTMAN,
Plaintiff,

v. 6:06-CV-1392 (GTS/GHL)

UTICA NATIONAL INSURANCE GROUP, INC.,
Defendant.

APPEARANCES: OF COUNSEL:

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Plaintiff, *Pro Se*
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JOSEPH A. DeTRAGLIA, ESQ.

HON. **GLENN T. SUDDABY**, U.S. District Judge

Appendix B

DECISION and ORDER

Currently before the Court in this employment discrimination action are the following seven motions: (1) Defendant's motion for summary judgment (Dkt. No. 30); (2) Plaintiff's motion to reopen discovery in order to obtain the disclosure of the personnel records of three employees (Dkt. No. 38); (3) Plaintiff's first motion for sanctions against defense counsel for, *inter alia,* willfully failing to produce the records in question (Dkt. No. 46); (4) Defendant's first motion for a protective order limiting any remaining disclosure obligations, which it may be deemed to have, to computerized searches and prohibiting Plaintiff from disclosing any material misrepresentations to the Court in his motion and response papers (Dkt. No. 64).confidential information she obtains (Dkt. No. 47); (5) Defendant's second motion for a protective order requiring Plaintiff to return to Defendant all privileged and /or inadvertently disclosed materials received by Plaintiff in electronic form, including a DVD inadvertently containing a small number of privileged emails (Dkt. No. 52); (6) Plaintiff's motion to compel the disclosure of the above-referenced personnel records of three employees (Dkt. No. 63); and (7) Plaintiff's second motion for sanctions, *inter alia,* making material misrepresentations to the Court in his motion and response papers (Dkt. No. 64).

For the reasons set forth below, the Court rules as follows: (1) Defendant's motion for summary judgment (Dkt. No. 30) is GRANTED; (2) Plaintiff's motion to reopen discovery (Dkt. No. 38) is DENIED;

(3) Plaintiff's first motion for sanctions against defense counsel (Dkt. No. 46) is DENIED; (4) Defendant's first motion for a protective order (Dkt. No. 47) is DENIED as moot; (5) Defendant's second motion for protective order (Dkt. No. 52) is GRANTED to the extent that it requests that Plaintiff be ordered to return to Defendant the DVD in question, but is otherwise denied; (6) Plaintiff's motion to compel disclosure of personnel records (Dkt. No. 63) is DENIED; (and (7) Plaintiff's second motion for sanctions (Dkt. No. 64) is DENIED. As a result, Plaintiff's Complaint is dismissed in its entirety, and Plaintiff is ordered to return to Defendant the above-described DVD within seven (7) days of this Decision and Order.

I. RELEVANT BACKGROUD

A. Procedural History

On November 16, 2006, Plaintiff filed a Complaint alleging that Defendant violated her following rights by terminating her employment under the pretext of poor performance: (1) her rights under the AGE Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.*; (2) her rights under the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 *et seq.*; and (3) her rights under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101. (*See* Dkt. No. 1.)

On November 5, 2007, discovery in this action closed. (Dkt. Nos. 12-14.) On January 24, 2008, Stefan D. Berg, Esq., requested permission to withdraw as counsel for Plaintiff. (Dkt. No. 15.) On

February 8, 2008, the Court granted Mr. Berg's request. (Dkt. No. 20.)

On April 3, 2008, Defendant moved for summary judgment (Dkt. No. 30.) Plaintiff requested, and was granted four (4) extensions of deadline by which she had to respond to Defendant's motion. On May 28, 2008 (the final day in which she had to respond to the motion), Plaintiff filed her response to Defendant's motion (Dkt. No. 39.)

On the same day she filed her response, Plaintiff also filed a motion to reopen discovery - more than four (4) months after the discovery deadline has passed. (Dkt. No. 38.) In her motion papers, Plaintiff argues that, although Mr. Berg had requested the personnel records of three individuals during discovery, these records were never produced. (*Id.* at 1-2.) Plaintiff also argues that these documents are material to her case, because of the circumstances that surrounded the hiring of two individuals, and the decision not to hire the third individual. (*Id.*)

In response to Plaintiff's motion to reopen discovery, Defendant argues that Plaintiff's motion should be denied for four reasons. First, argues Defendant, Plaintiff failed to articulate any reason for needing the records other that "they will allegedly show circumstances that surrounded [the] hiring of Mr. Raga and Mrs. Krug, but not hiring Martha Dumont by Michael Evolo." (Dkt. No. 43 at 1.) In support of its argument, Defendant points out that Plaintiff has not alleged in her Complaint a claim for failure to hire, which makes records of whom

Appendix B

Plaintiff's

3

former supervisor may or may not have hired irrelevant to Plaintiff's action. (*Id.* at 1-2.) Second, argues Defendant, because only Mr. Raga worked under Mr. Evolo during the same time period as did Plaintiff, the request of the personnel records of the other two individuals is "not only irrelevant, but also completely inappropriate and would violate their rights to privacy and confidentiality.) (*Id.* at 2.) Third, argues Defendant, is already provided Mr. Raga's records to Plaintiff "during the extensive investigation of [Plaintiff's] identical discrimination claims before the New York State Division of Human Rights." (*Id.*) Defendant also indicates that these documents were used by Plaintiff during her deposition of Mr. Evolo. (*Id.*) Fourth, and finally, argues Defendant, Plaintiff failed to comply with Fed. R. Civ. P. 56(f) when she did not file an affidavit with her motion to compel. (*Id.*)

On July 31, 2008, Plaintiff filed a motion for sanctions under Fed. R. Civ. P. 11, based on defense counsel's conduct throughout litigation, with particular focus on counsel's actions once Plaintiff became *pro se*. (Dkt. No. 46.)

On August 8, 2008, Defendant filed a motion for a protective order limiting any remaining disclosure obligations, which it may be deemed to have, to computerized searches and prohibiting Plaintiff from disclosing any confidential information she obtains. (Dkt. No. 47.) in its motion, Defendant argues that it has already disclosed approximately six thousand (6,000) pages of requested materials,

and that requiring disclosure of any paper documents would be unduly burdensome. (Dkt. No. 47, at 2.) In addition, Defendant argues that it "intends to turn over any additional emails if finds[,]" noting that it is not trying to hide any materials, but that

4

the search is burdensome and time consuming. (*Id.* at 3-4.)

On September 12, 2008, Defendant filed a second motion for protective order. (Dkt. No. 52.) In its motion, Defendant seeks "an Order requiring Plaintiff to return to Defendant a DVD which inadvertently disclosed privileged and other email falling outside the scope of the Court's Order dated February 8, 2008." (Dkt. No. 53.)

On October 2, 2008, this case was then reassigned to the undersigned. (Dkt. No. 56.)

On November 4, 2008, Plaintiff filed a motion to compel disclosure of the same personnel records sought in the motion to reopen discovery. (Dkt. No. 63.)

On the same day, Plaintiff also filed a second motion for Fed. R. Civ. P. 11 sanctions against defense counsel for, *inter alia*, making material misrepresentations to the Court in his motion and response papers. (Dkt. No. 64.)

B. Statement of Undisputed Material Facts

For the sake of brevity, the Court will only

provide a brief recitation of the undisputed material facts on Defendant's motion for summary judgment.

Plaintiff was hired by Defendant on June 28, 1990. (*Compare* Dkt. No. 30, Part 2, ¶ 1 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 1 [Plf.'s Rule 7.1 Response].) On March 3, 1995, Plaintiff was transferred to the corporate accounting department, where Plaintiff held the title of Junior Accountant. (*Compare* Dkt. No. 30, Part 2, ¶¶ 4-5 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶¶ 4-5 [Plf.'s Rule 7.1 Response].) Plaintiff held this position throughout the remainder of her employment with Defendant. (*Compare* Dkt. No. 30, Part 2, ¶ 6 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 6 Plf.'s Rule 7.1 Response].)

In the Fall of 2002, Defendant restructured some of its departments. (*Compare* Dkt. No.

5

30, Part 2, ¶ 7 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 7 Plf.'s Rule 7.1 Response].) As a result, reinsurance accounting was reorganized into a new department known as the reinsurance accounting unit. (*Compare* Dkt. No. 30, Part 2, ¶ 8 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 8 Plf.'s Rule 7.1 Response].) Michael Evolo was made supervisor of this unit. (*Compare* Dkt. No. 30, Part 2, ¶ 9 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 9 Plf.'s Rule 7.1 Response].) Three employees, including Plaintiff, reported to Mr. Evolo. (*Compare* Dkt. No. 30, Part 2, ¶ 10 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 10 Plf.'s Rule 7.1 Response].) In August 2003, Mr. Evolo evaluated Plaintiff after reviewing her performance for about

ten (10) months. (*Compare* Dkt. No. 30, Part 2, ¶ 13 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 13 Plf.'s Rule 7.1 Response].) This resulted in an overall performance rating of "3" (which means that she "meets expectations of the position.") (*Compare* Dkt. No. 30, Part 2, ¶ 14 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 14 Plf.'s Rule 7.1 Response].) Plaintiff stated in her deposition that "the 2003 review was not biased[but] ... was consistent with the reviews that [she] was getting for the previous years with [Defendant]." (*Compare* Dkt. No. 30, Part 2, ¶ 15 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 15 Plf.'s Rule 7.1 Response].)

During the same period, Mr. Evolo evaluated an Accountant II co-worker of Plaintiff after reviewing his performance for about ten months. (*Compare* Dkt. No. 30, Part 2, ¶ 16 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 16 Plf.'s Rule 7.1 Response].) This resulted in an overall performance rating for Accountant II of "2" (which means that she "does not fully meet the expectations of the positions.") (*Compare* Dkt. No. 30, Part 2, ¶ 17 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 17 Plf.'s Rule 7.1 Response].) Subsequent to

2003, Mr. Evolo gave Plaintiff performance evaluations that indicated that her performance was declining. (*Compare* Dkt. No. 30, Part 2, ¶ 19 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 19 Plf.'s Rule 7.1 Response].) On May 11, 2004, Mr. Evolo and Plaintiff discussed her job performance and Mr. Evolo gave Plaintiff a written memorandum "identifying certain areas of [plaintiff's performance that needed immediate improvement." (*Compare*

Dkt. No. 30, Part 2, ¶ 20 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 20 Plf.'s Rule 7.1 Response].) On June 8, 2004, Mr. Evolo sent Plaintiff an email, again outlining the need for improvement in several areas of her job performance. (*Compare* Dkt. No. 30, Part 2, ¶ 21 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 21 Plf.'s Rule 7.1 Response].) In July 2004, Mr. Evolo provided an annual evaluation of Plaintiff. (*Compare* Dkt. No. 30, Part 2, ¶ 22 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 22 Plf.'s Rule 7.1 Response].) In that review, he rated her overall performance as a "2." (*Compare* Dkt. No. 30, Part 2, ¶ 23 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 23 Plf.'s Rule 7.1 Response].) In that same month, Mr. Evolo rated the overall performance of Accountant II as a "3." (*Compare* Dkt. No. 30, Part 2, ¶ 24 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 24 Plf.'s Rule 7.1 Response].) On August 10, 2004, Plaintiff again received a written memorandum from Mr. Evolo which indicated the need for Plaintiff to "improve her technical performance." (*Compare* Dkt. No 30, Part 2, ¶ 25 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 25 Plf.'s Rule 7.1 Response].)

On January 6, 2005, Mr. Evolo and Mr. Evolo's supervisor met to discuss Plaintiff's job performance, and Plaintiff was put on probation and given a written warning. (*Compare* Dkt. No. 30, Part 2, ¶ 26 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1, ¶ 26 Plf.'s Rule 7.1 Response].) On February 21, 2005, Defendant terminated Plaintiff's

employment. (*Compare* Dkt. No. 30, Part 2, ¶ 29 [Defs.' Rule 7.1 Statement] *with* Dkt. No. 40, Part 1,

¶ 29 Plf.'s Rule 7.1 Response].) Throughout her employment, Plaintiff frequently coughed as a result of a "throat condition." (Dkt. No. 1 at 4.) Plaintiff believes that this "throat condition" constitutes a disability within the meaning of the ADA. (Dkt. No. 1 at 4-5.)

II. LEGAL STANDARD ON MOTION FOR SUMMARY JUDGMENT

Under Fed. R. Civ. P. 56, summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In determining whether a genuine issue of material fact exists, the Court must resolve all ambiguities and draw all reasonable inferences against the moving party. In addition, "[the moving party] bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the ... [record] which it believes demonstrate[s] the absence of any genuine issue of material fact." *Celotex v. Catrett*, 477 U.S. 317, 323-24 (1986). However, when the moving party has met this initial responsibility, the nonmoving party must come forward with "specific facts showing a genuine issue [of material fact] for trial." Fed. R. Civ. P. 56(e)(2).

As for the *materiality* requirement, a dispute of fact is 'material" if it "might affect the outcome of the suit under the governing law." *Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248 [citation omitted].

As for the *genuineness* requirement, a dispute fact is "genuine" if "the [record] evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* As a

8

result, "[c]onclusory allegations, conjecture and speculation ... are insufficient to create a *genuine* issue of fact." *Kerzer v. Kingly Mfg.*, 156 F.3d 396, 400 (2d Cir. 1998) [citation omitted; emphasis added]; see also Fed.R. Civ. P. 56(e)(2).[1] Similarly, inadmissible hearsay is insufficient to create a genuine issue of fact, "absent a showing that admissible evidence will be available at trial." Burlington Coat Factory Warehouse Corp. v. Esprit De Corp., 769 F.2d 919, 924 (2d Cir. 1985) [citation omitted]. Moreover, "an affidavit ... that, by omission or addition, contradicts the affiant's previous deposition testimony" is insufficient to create a *genuine* issue of fact. Hayes v. New York City Dept. of Corr., 84 F.3d 614, 619 (2d Cir. 1996) [citations omitted].

III. DISCUSSION

A. Plaintiff's Motion to Reopen Discovery, Her Motion to Compel Disclosure of Personnel Files, Her Two Motions for Sanctions, and Defendant's First Motion for a Protective Order

Appendix B

"To request discovery under Rule 56(f), a party must file an affidavit describing: (1) what facts are sought and how they are to be obtained; (2) how this facts are reasonably expected to raise a genuine issue of material fact; (3) what efforts the affiant has made to obtain them; and (4) why the affiant's efforts were unsuccessful." *Gualandi v. Adams*, 385 F. 3d 236, 244 (2d Cir. 2004) (citing *Hudson River Sloop Clearwater, Inc. v. Dep't of the Navy*, 891 F. 2d 414, 422 [2d. Cir. 1989]). A district court may deny a discovery request where "the additional discovery would not have precluded summary judgment." *Qualls v. Blue Cross of Cal., Inc.*, 22 F.3d 839,

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[1] As the Supreme Court has famously explained, "[The nonmoving party] must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus., Co. Ltd. V. Zenith Radio Corp, 475 U,S. 574, 585-86 (1986) [citations omitted].

844 (9th Cir. 1994). Stated another way, "[n]o discovery ... is necessary where [the requesting party] cannot establish an essential element of their cause of auction or where [that party] fail[s] to create a material issue of fact." *Crossland Federal Sav. Bank v. by F.D.I.C. v. 114 East Realty Co.*, 93-cv-2925, 1994 WL 30460, at *4 (S.D.N.Y. Jan 28, 1994) (citing *Burke v. Bevona*, 931 F.2d 998, 1002 [2d Cir. 1991]).

After carefully considering the matter, the Court concludes that Plaintiff's motion to reopen discovery, her motion to compel the disclosure of personnel files, and her two motions for sanctions

should be denied (and that Defendant's first motion for a protective order should therefore be denied as moot) for four reasons. First, Plaintiff failed to comply with Fed. R. Civ. P. 56(f) by not filing an affidavit with her motion, which in and of itself is grounds for denying her motion. [2]

Second, the Court finds, based on the record evidence, that the materials that Plaintiff has requested are not reasonable expected to raise a genuine issue of material fact. Indeed, her argument that the materials would do so is entirely speculative in nature. The Court notes that the flaws with plaintiff's claims are discussed below in Part III.B. of this Decision and Order. The Court notes also that Plaintiff's former attorney, Mr. Berg, represented Plaintiff throughout

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[2] The Court acknowledges that the special leniency normally afforded to *pro se* litigants may somewhat loosen the Court's procedural rules. *See Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983). However, that special leniency does not completely relieve a pro se litigant of the duty to comply with those procedural rules. Rather, as both the Supreme Court and Second Circuit have repeatedly recognized, the requirements set forth in the Federal Rules of Civil procedure (and Local Rules of Practice) are procedural rules that even pro se litigants must follow. *See McNeil v. U.S.*, 508 U.S. 106, 113 (1993); *Faretta v. California*, 422 U.S. 806, 834, n.46 (1975); *Triestman v. Fed, Bureau of Prisons*, 470 F.3d 471, 477 (2d Cir. 2006); *Traugth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983). The Court also notes that Plaintiff received a copy of the Pro Se Manuel on February 8, 2008, more than two months before she filed her motion to compel.

discovery. When Defendant did not provide the materials in response to Plaintiff's request to them, Mr. Berg decided not to file a motion to compel. At the very least, this raises a significant doubt, in the Court's view, as to necessity of the materials.

Third, as pointed out by defense counsel, Plaintiff has already been provided the personnel records of one of the three employees (Mr. Raga). As a result, she does not need them to be again produced by Defendant.

Fourth, and finally, Defendant provided approximately six (6,000) pages of requested materials to Plaintiff during discovery, which evidences the fact that Defendant's failure to turn over the requested materials does not amount to bad faith, or anything that resembles sanctionable activity.

For all of these reasons, Plaintiff's motion to reopen discovery (Dkt. No. 38) is denied; her motion to compel the disclosure of personnel records (Dkt. No. 63) is denied; her Plaintiff's first motion for sanctions against defense counsel (Dkt. No. 46) is denied; her second motion for sanctions against defense counsel (Dkt. No. 64) is denied; and Defendant's first motion for a protective order (Dkt. No. 47) is denied as moot.

B. Defendant's Motion for Summary Judgment

1. Plaintiff's ADA Claim

Appendix B

In its motion for summary judgment, Defendant argues that Plaintiff has failed to establish a prima facie case of discrimination under the ADA because Plaintiff is unable to meet the second or fourth prongs of the test. (Dkt. No. 31, at 6.) In response, Plaintiff argues that she has met her burden of establishing a prima facie case of discrimination, has met her burden of showing pretext, and has produced evidence of disparate treatment (Dkt. No. 39, at 5-7.)

11

Having reviewed all the evidence, the Court concludes that Plaintiff has not met her prima facie burden under the ADA, and that in alternative, she has not demonstrated that her termination because of poor work performance was pretext for discrimination.

In disability discrimination cases, courts apply the tree-step burden-shifting analysis established in *McDonnell Douglas Corp. v. Green*, 411 U.S.792, 802-04 (1973.) First, the plaintiff must establish a prima facie case. *McDonnell Douglas Corp. v. Green*, 411 U.S.792, 802-04. If the plaintiff establishes a prima facie case, the burden of production shifts to the defendant to demonstrate a legitimate non-discriminatory reason for its actions. *Id.* Once the defendant offers a legitimate non-discriminatory reason, in order to prevail, the plaintiff must show that the proffered reason is nothing but a pretext for intentional discrimination. *Id.* Despite the fact that the burden of production may shift, at all times the plaintiff maintains the burden of persuasion, and therefore, in order to withstand summary judgment stage, the plaintiff "must establish a genuine issue of

material facts either through direct, statistical or circumstantial evidence as to whether the employer's reason for discharging her is false and as to whether it is more likely that a discriminatory reason motivated the employer to make the adverse employment decision." *Gallo v. Prudential Residential Servs., Ltd.*, 22 F.3d 1219, 1225 (2d Cir. 1994).

"A plaintiff alleging employment discrimination under the ADA bears the initial burden of establishing a prima facie case." *Ryan v. Grae & Rybicki, P.C.*, 135 F.3d 867, 869 (2d Cir. 1998) [citation omitted]. To satisfy this burden, plaintiff must establish that (1) her employer is subject to (1) her employer is subject to the ADA; (2) she is disabled within the meaning of the ADA; (3) she was otherwise qualified to perform the essential functions of her job, with or without reasonable accommodation; and (4) she suffered and adverse employment action because of her disability."

12

Cody v. County of Nassau, 577 F. Supp.2d 623, 627 (E.D.N.Y 2008) [citation omitted]. "Not every impairment is a 'disability' within the meaning of the ADA; rather, there are two requirements: the impairment must limit a major life activity and the limitation must be substantial." *Capobianco v. City of New York*, 422 F.3d 47, 56 (2d Cir. 2005).

In her Complaint, Plaintiff alleges that she frequently coughed as a result of a throat condition for which she had a surgery. (Dkt. No. 1 at 4-5.) At her deposition, Plaintiff testified that her disability was her "impaired condition, the urge to cough

beyond my control." (Dkt. No. 30, Part 4, at 26 [Plf's Dep. Tr. 24:8-9].) Plaintiff admitted in her deposition that her "impaired condition" did not prevent her from doing any daily life activities. (Dkt. No. 30, part 4, at 26 [Plf's Dep. Tr.24:10-12].) In addition, Plaintiff testified that her medical condition did not limit her ability to perform her job duties. (Dkt. No. 30, part 4, at 27 [Plf's Dep. Tr.25:6-8].) Plaintiff also testified that she did not believe that her condition was "not related to [her] employment." (Dkt. No. 30, part 4, at 27 [Plf's Dep. Tr.25:9-11].) Because plaintiff cannot establish that her cough was a substantial impairment that limited a major life activity, Plaintiff cannot meet her prima facie burden of demonstrating that she had a disability within the meaning of the ADA. The fact that Defendant failed to turn over the requested materials is therefore irrelevant.

In the alternative, even if Plaintiff had demonstrated that her cough amounted to a disability within the meaning of the ADA, the Court finds that plaintiff has failed to offer evidence that she was terminated because of her cough. Finally, and most importantly, even if the Court were to find that Plaintiff had met her prima facie burden under the ADA (which it does not find), Plaintiff's claim would fail because Defendant offered a non-discriminatory

reason for her termination-i.e. poor work performance-and she has not demonstrated any record evidence that this allegation of poor work performance is a pretext for discrimination. [3]

Appendix B

2. Plaintiff's ADEA and Title VII Claims

"On a motion for summary judgment, claims of discrimination under Title VII, Section 1981, the ADEA, the NYSHRL, and the NYSCRL are analyzed under the framework articulated in *McDonnellDouglas Corp. v. Green*, 411 U.S.792, 802-04 (1973.)" *Davis v. Avaya*, Inc., 295 F.App'x 380, 381 (2d Cir. Oct. 2, 2008). Under this framework, in order for a Plaintiff to service summary judgment, she must first make out a prima facie case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S.792, 802-04. In order to make out a prima facie case, Plaintiff must demonstrate the following: "(1) membership in the protected class; (2) satisfactory job performance; (3) termination of employment or other adverse employment action; and (4) the ultimate filing of the position with an individual who is not a member of the protected class." Farias v. Industrial Sys., Inc. 259 F.3d 91, 98 (2d Cir. 2001). Further, the protected classification "must have actually played a role in "the employer's decision making process and had a determinative influence on the outcome. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S.133, 141 (2000) [citation and internal quotation omitted].

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[3] The Court notes there is a copious documentation that reflects the decline in Plaintiff's work., Mr. Evolo's efforts to work with Plaintiff, and Mr. Evolo's explanation of why Plaintiff's work performance was poor. (*See* Dkt. No. 30, Part 4, at 39-54.) In addition, NYSDHR's dismissal of Plaintiff's discrimination complaint stated that its investigation "failed to reveal that [Plaintiff] was subjected to

disparate treatment with regards to tasks and performance standards ... between August 2003 and January, 2005, [when Plaintiff was counseled on at least six occasions for unsatisfactory performance and given suggestions for improvement ..." The investigation also noted that "[others] were evaluated on the same criteria ... and [Plaintiff] was terminated because she failed to improve on her work performance and not because of her age, gender, or disability." (See Dkt. No. 30, Part 4, at 19-21 [DeTraglia Affidavit Exhibit C].)

14

The record evidence demonstrates that Plaintiff fails the second prong of the test in that she was not satisfactory performing her job at the time of her termination. Plaintiff also fails the fourth prong because the evidence establishes that Plaintiff's supervisor filled Plaintiff's position by employing a woman over forty (40) years of age. (Dkt. No. 31, Part. 3, at 28 [Evolo Dep. Tr 54:11-19].) Furthermore, Plaintiff admitted during her deposition that her supervisor had never made any comments to her concerning her age and gender. (Dkt. No. 30, Part. 4, at 28 [Plf's Dep. Tr 38:9-14].) In sum, even if the requested personnel records demonstrate evidence of discriminatory hiring practices, the records do not help Plaintiff overcome the necessary element of satisfactory job performance, nor do they address the filing of the position that Plaintiff was terminated from. As a result, Plaintiff cannot establish a prima facie case.

In the alternative, even if the Court found that Plaintiff established a prima facie case under the ADEA and Title VII, Defendant has asserted a legitimate, non-discriminatory reason for its action, which Plaintiff cannot show to be pretextual. The law

is clear that, to survive summary judgment, once a Plaintiff makes out her prima facie face, the Employer must simply demonstrate a non-discriminatory reason for termination, such as poor work performance. [4] Once an Employer does this, the burden falls squarely on Plaintiff to show that the Employer did not

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[4] If the plaintiff is able to meet her burden of establishing a prima facie case, "the burden of production then shifts to the defendant who must proffer a legitimate, non-discriminatory reason for its actions in order to rebut the presumption of unlawful discrimination." *Greenway v. Buffalo Hilton Hotel*, 143 F.3d 47, 52 (2d Cir. 1998) [citation omitted]. At this stage, "[t]he employer merely needs to 'explain what he has done.'" *Sanzo v. Uniondale Union Free School Dist.*, 381 F. Supp.2d 113, 117-18 (E.D.N.Y. 2005) (quoting *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256[1981]). Poor job performance, which includes poor communication with supervisors, as well as desire to promote efficency, constitute "legitimate, clear, specific and non-discriminatory reasons[s]" for termination. *Potenza v. City of New York Dept. of Transp.*, 00-CV-0707, 2001 WL1267172, at *6(S.D.N.Y. Oct 23, 2001).

terminate her employment based on the well-documented unsatisfactory job performance. [5]

Here, plaintiff simply cannot meet her burden. The record evidence establishes that Plaintiff's work performance has been declining for a significant period of time. (*See* Dkt. No. 31, part 2, at 30-48.) Despite numerous attempts at corrective action by Defendant, however, Plaintiff's performance did not improve to an acceptable level, and her employment was terminated. Although plaintiff may allege that her supervisor was biased, she has not adduced any

specific evidence of bias to withstand summary judgment. In fact, the record evidence is directly to the contrary in that her supervisor consistently applied Defendant's uniform performance standards toward his subordinates.

For all these reasons, Defendant's motion for summary judgment (Dkt. No. 30) is granted.

C. Defendant's Second Motion for a Protective Order

On September 12, 2008, Defendant filed a second motion for protective order. (Dkt. No. 52.) In its affidavit submitted in support of its motion, Defendant indicated that, while attempting to provide Plaintiff with certain documentation that she requested after the close of discovery, which the Court addressed in its order dated February 8, 2008, Defendant inadvertently disclosed privileged and other emails falling outside the scope of the Order. (Dkt.

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[5] Should the employer satisfy its burden, "the presumption [of discrimination], having fulfilled its role of forcing the defendant to come forward with some [non-discriminatory] response, simply drops out of the picture." *Greenway*, 143 F.3d at 52 (quoting *St. Mary's Honor Ctr. V. Hicks*, 5009 U.S. 502, 510-11 (1993) (first alteration in original). As a result, the "ultimate burden" shifts back to plaintiff, who must prove that "the employer'sproffered reason is merely a pretext for its intentional discrimination." *Greenway*, 143 F.3d at 52 [citations omitted]. "If the plaintiff cannot prove intentional discrimination motivated by her disability, then the defendants are entitled to summary judgment. Sanzo, 381 F. Supp.2d at 118.

No.53.) Defendant, therefore requested in its second motion for a protective order that Plaintiff be ordered to return to it the DVD that contains information that is outside the scope of the Court's Order. Because the information contained on the DVD is Defendant's work product, and because the Court concludes that granting summary judgment in Defendant's favor is appropriate, the Court finds that there is no reason for Plaintiff to continue to possess these materials. As a result, Plaintiff is ordered to return to Defendant the above described DVD within seven (7) days of this Decision and Order. If she fails to do so, the Court will entertain a motion by Defendant for the imposition of sanctions against Plaintiff, including monetary sanctions.

ACCORDINGLY, it is

ORDERED that Defendant's motion for summary judgment (Dkt. No. 30) is **GRANTED**; and it is further

ORDERED that Plaintiff's motion to reopen discovery (Dkt. No. 38) is **DENIED**; and it is further

ORDERED that Plaintiff's first motion for sanctions (Dkt. No. 46) is **DENIED**; and it is further

ORDERED that Defendant's first motion for a protective order (Dkt. No. 47) is **DENIED** as moot; and it is further

ORDERED that Plaintiff's motion to compel the disclosure of the personnel records of three employees (Dkt. No. 63) is **DENIED**; and it is further

ORDERED that Plaintiff's second motion for sanctions (Dkt. No. 64) is **DENIED**; and it is further

ORDERED that Defendant's second motion

for a protective order (Dkt. No. 52) is **GRANTED** to the extent that it requests that Plaintiff be ordered to return to Defendant the DVD in question, but is otherwise **DENIED**; and it is further

ORDERED that Plaintiff shall deliver to Defendant the requested DVD within seven (7) days of this Decision and Order. If she fails to do so, the Court will entertain a motion by Defendant for the imposition of sanctions against Plaintiff, including monetary sanctions; and it is further

ORDERED that, when Defendant receives the DVD in question, it shall file with the Court a letter stating that fact, whereupon a judgment shall be issued and this action shall be closed.

Dated: March 27, 2009
Syracuse, New York

s/

Hon. Glenn T. Suddaby
U.S. District Judge

APPENDIX C – RELEVANT STATUTES

U.S. Constitution: Seventh Amendment

Seventh Amendment - Civil Trials

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*

42 U.S.C. §2000e-2. Unlawful employment practices

(a) Employer practices
It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(d) Training programs
It shall be an unlawful employment practice for any

employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

ADEA, 29 U.S.C. §621 *et seq.*

29 U.S.C. §623 Prohibition of age discrimination

(a) Employer practices
It shall be unlawful for an employer—
(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against
any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
(3) to reduce the wage rate of any employee in order to comply with this chapter.

APPENDIX D – ADDITIONAL MATERIAL

Case 09-1385-cv-DJ-JMM-RDS
U.S. Court of Appeals for the Second Circuit
Brief for Defendant-Appellee, p.1 Filed 08/07/09

DEFENDANT-APPELLEE'S RULE 26.1 STATEMENT

Defendant-Appellee Utica Mutual Insurance Company ("Utica Mutual") is a mutual insurance company organized under the laws of New York State. Utica Mutual has never been a publically traded corporation, has never issued any stock, and has never had a parent corporation. Utica Mutual is one of several insurance companies collectively referred to as Utica National Insurance Group. Plaintiff-Appellant erroneously denominated Defendant-Appellee as Utica National Insurance Group, Inc., which is not a legal entity.

STATEMENT OF JURISDICTION

Pro Se Appellant Grazyna H. Christman ("Christman") appeals a Judgment of the United States District Court for the Northern District of New York dated April 6, 2009. (A-34). The Judgment was entered in accordance with a March 27,2009 Decision and Order of the Honorable Glenn T. Suddaby which granted Utica Mutual's summary judgment motion and dismissed Christman's Complaint pursuant to Federal Rule of Civil Procedure 56. (A-16-33). Additionally, the Decision and Order ruled on six other motions, including (1) Christman's motion to reopen discovery, (2) Christman's first motion for sanctions against defense counsel, (3) Utica Mutual's first motion for protective order, (4) Utica Mutual's second motion for a protective order, (5) Christman's motion to compel disclosure

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43, p.1

[Logo]
NINA H. OWENS
Assistant Secretary
Director of Employment and Development
P.O. Box 530, Utica, New York 13503-0530
Telephone (315) 734-2221
Fax (315) 734-2495

February 22, 2005
Ms. Grazyna H. Christman
450 Elmdale Ave.
Utica, NY 13502

Dear Grazyna:
This letter is to confirm the termination of your employment and your employee benefits with the Utica National Insurance Group effective February 21, 2005.
I am enclosing the appropriate forms for continuation or conversion of your insurance, should you desire to obtain coverage.
You may also elect to continue your health coverage under your current group policy subject to the conditions and limitations outlined in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Information regarding your rights under COBRA will be mailed directly from the Benefit Section of Home Office Human Resources. You will also find a certificate of group health plan

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43, p.1-2

coverage as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) with your COBRA information.
You have 31 days from February 21, 2005 to convert your Group Life Insurance coverage to an individual policy for which you pay the full premium. If you wish to exercise this conversion privilege, please contact MetLife's toll free number 1-877-275-6387 or contact them via Internet at solutions@metlife.com.
Please complete, sign and date the following form: Disposition of Company Software form. Please return in the self-addressed envelope.
If you have automobile or homeowner's insurance coverages billed through payroll deduction or written with an "employee discount", your policy will be cancelled and rewritten on a direct bill basis.

Utica National Insurance Group Utica Mutual Insurance Company and its affiliated companies
Insurance that starts with you.

Ms. Grazyna Christman
February 22, 2005
Page 2

Information pertaining to your Employee Profit Sharing and Investment Plan and Flexible Spending accounts and your options due to termination of employment will be forwarded to you shortly. If you

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/22/05 Termination Letter
Exhibit 43, p.2

have any questions before receiving this information, please contact Teresa Evans (315) 734-2287 or Janet McLaughlin (315) 734-2594 section of the Human Resources Department.
You should contact Michelle Siriano, Credit Union, Ext. 2139 regarding your account.
Finally, enclosed is a check in the amount of $550.57, representing payment for the overtime worked during the period 2/10/05 – 2/19/05. Per your request, I'm also enclosing a copy of the time record you had prepared.

Sincerely,

s/
Nina H. Owens

NHO:ts
Enc.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.2

CLARKE PETERSON, CPCU, SPHR
Senior Vice President
Human Resources
P.O. Box 530, Utica, New York 13503-0530
e-mail: Clarke.peterson@uticanational.com
Telephone (315) 734-2735
Fax (315) 734-2495
December 13, 2004
Grazyna H. Christman
HO/Reinsurance Accounting

During the second quarter of next year, your employment anniversary will represent a milestone for you in your career at Utica National.

As we plan for that special occasion, we are asking for your help. Through our corporate service award program, the Company will provide several gift selections from which to choose to commemorate your anniversary. The help we need from you is to make that gift choice now. Of course, the presentation of the gift will take place on your actual anniversary during 2005.
Shortly, (appox. 2-3 weeks) you will receive an e-mail from our vendor, OC Tanner, detailing how to access your brochure and place your order. The e-mail, awardcenter@octanner.com, will contain a personal access code that you'll need to get into the website. Simply follow the online instructions to view your

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.2

year-level brochure and make your gift selection. Please note that some gift items, such as bracelets, specify a length. Please be sure to know your size before ordering. If the length is not large enough for your personal needs, please select another item from the available gift selections for the year level. Watches will specify a wrist size, but are typically similar to those you would find in a jewelry store. With the implementation of online ordering, individual wrist sizing will not be available. Finally, at the higher levels, rings may be available. Please be sure to order the correct ring size; ring sizers are available upon request. Questions may be directed to Denise Romanow at ext. 2736.

Please note that your selection should be made within 10 days of receipt of your e-mail. If you do not make a timely selection, a gift will be selected for you.

I hope you enjoy making your selection through out service award program. We'll be looking forward to the presentation in the coming months.

Sincerely,

s/

Clarke Peterson

CP:dtr

Utica National Insurance Group Utica National Insurance Group and its affiliated companies Insurance that starts with you

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.3

Utica National Insurance Group
<awardcenter@octanner.com>
01/01/2005 04:35 AM
To: Grazyna.Christman@notes.uticanational.com
cc:
bcc:
Subject: Utica National Insurance Group Recognition Award Notification
Dear Grazyna,

Happy Anniversary! Thank you for your 15 years of service with Utica National Insurance Group!

We are please to present you an award in recognition of this achievement. In an effort to make this event meaningful, please choose an award you will value. You can view the choices on your website at: http://www.eawardcenter.com/rb/0000124454/1
When you have found something you like, follow the simple instructions to place your order using your personal access number.
Your personal access number is 0077 31017 93142.
Each award is custom made. In order for your award to arrive in time for your anniversary, it is important that you order immediately.
Please do not reply to this email. It is for notification only. If you have questions regarding this message, contact our Awards Administration Center.
United States and Canada

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff Employee of UNIG not UMICO
Exhibit 99, p.3-4

envisionorder@octanner.com
888-708-7080
Outside the United States and Canada
Global @octanner.com
Congratulations – and thank you for your contributions to Utica National Insurance Group.
3
O.C.TANNER
The Recognition Experience

Congratulations, Grazyna H. Christman, on your 15 Year achievement with Utica National Insurance Group!

Your order has been processed.
Please print this screen for your records.
Your order number is 0104334782.
Selection
Man's Bulova Watch and Corporate Symbol Lapel Pin (Y)
To track your award order, visit www.octanner.com
Selection # 671
Scheduled Delivery Date 3/12/05
CONTINUE
To track your award order, visit www.octanner.com
ps://www.awardselect.com/weboe/Order.jsp?Comman
d=SubmitOrder 01/10/2005

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting
Exhibit 94

Careers by Location Page 1 of 2
[Logo] Utica national Insurance Group
Insurance that start with you ℠
Home
About Utica National Locate an Agent
Insurance Protection Where to Find Us
Consumer-Customer Service Career Opportunities
For Agents & Brokers UticaLIFE
Career opportunities [logo]
Career Opportunities Home President's Message
Careers Overview Benefits Careers by Location
Careers by Department About Utica and the Mohawk Valley
Submit Your Resume
great products [logo/picture]
great service [logo/picture]
great people [logo/picture]
Job Back to Listing
Job Title: Reinsurance Accountant (Full Time)

Date Posted: 4/27/2005
Department: Reinsurance

Job Description: Complete necessary workpapers for monthly, quarterly and annual statements. Responsible for reinsurance accounting processing; including billings and collections of reinsurance recoverables, payment of reinsurance contract

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting
Exhibit 94

premiums, completion of Schedule F for the annual statement, general ledger reconciliations, updating of relevant processing tables and maintaining and/or updating relevant PC applications. Process and complete the related reinsurance requirements on a quarterly and annual basis for various insurance regulatory departments. Complete various other related accounting work for reinsurance processing as needed. Ability to meet deadlines and processing constraints is important.
Qualifications: 4-year Accounting degree or equivalent work experience is required. At least 2 years of previous accounting experience is preferred. IIA Insurance coursework a plus. Extensive PC skills required. Knowledge of Excel preferred. Overtime required when necessary.
Office

Office: Home
Office Address: 180 Genesee Street
New Hartford, NY 13413-2299

Human resources
E-mail: HR.Applications@uticanational,com
Fax: 315-734-2495
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Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant's 04/27/05 Job Posting
Exhibit 94

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Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR 04/13/05 Verified Complaint
Exhibit 47, p.1

[Logo] STATE OF NEW YORK EXECUTIVE DEPARTMENT DIVISION OF HUMAN RIGHTS
333 EAST WASHINGTON STREET, ROOM 443
SYRACUSE, NEW YORK 13202 (315) 428-4633 Fax (315) 428-4638 www.nysdhr.com GEORGE E. PATAKI, GOVERNOR APRIL 13, 2005 MICHELLE CHENEY DONALDSON COMMISSIONER
Grazyna H. Christman
450 Elmdale Ave. Utica, NY 13502 (315) 733-6687
Re: Grazyna H. Christman v. Utica National Insurance Group SDHR Case No. 10105010
Dear Grazyna H. Christman:
Please be advised that this office has received your verified complaint and it is now part of the Division's case load. The Division, except for critical exceptions, investigates complaints chronologically by date of filing. Your filing date is 4/13/2005.

You will be contacted by the Human Rights Specialist assigned to your case when the active investigation of your complaint begins.
Please notify us immediately of any change in your address and telephone number should you move. A form is enclosed for this purpose.
To protect your rights, it is essential that the Division be advised promptly at all times of any change of address. Thank you for your cooperation.
Very truly yours,
Forrest Cummings, Jr. Regional Manager

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08
Stefan E. Berg, Esq., Retainer Agreement
Attachment No.2, p.4

8. Disputes under this Agreement. If you dispute that you owe any attorney's fees that may be biller by our firm, you have the right to elect to resolve that dispute by arbitration, under the Rules of the Chief Administrator of the Courts, Part 137. This arbitration proceeding is not available if the dispute is for less than $1,000 or more than $50,000. If I learn that such a dispute exists, I will send you a notice telling you how to file for arbitration.
9. Entire Agreement. This is the entire agreement between us. It may only be modified by a writing which we both sign. By signing this letter, you indicate that you have read it, fully understand it, and agree to its terms. Your signature also indicates that I have answered all of your questions and fully explained this agreement to your satisfaction.
If the terms of this agreement are fully acceptable to you, please date and sign it below and return it to me, along with your payment due.
I look forward to continuing to work with you. If you have any questions or concerns, please give me a call.
Sincerely yours,
s/
Stefan D. Berg
I have read this retainer agreement, and agree to its terms. Dated: December 26, 2005
s/
Client: Grazyna H. Christman

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-2
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08
12/22/07 Letter from Stefan E. Berg, Esq.
Attachment No.4, p.1

Stefan D. Berg, Esq.
Attorney and Counselor at Law
BERG LAW OFFICE
309 Arnold Avenue
Syracuse, New York 13210
(315) 476-0806

December 22, 2007

Grazyna Christman
450Elmdale Avenue
Utica, N.Y. 13502

Dear Ms. Christman:
I am writing to provide you with my thoughts regarding further work on your case against the Insurance Company. I have reviewed the transcripts of the depositions and the documents in the file.

After careful analysis and thought, I must advise you that there is insufficient evidence of age, gender or disability discrimination for a court to rule in your favor. In my opinion, the outcome of a motion made the Utica National for summary judgment will result in the court granting that motion on all counts.
It is possible to meet with a Judge for the purpose of mediating or to discuss resolution. However, that will not alter the ultimate outcome. Utica National can

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 46-4
Motion for Sanctions against Defendant's
Counsel Filed 07/31/08
12/22/07 Letter from Stefan E. Berg, Esq.
Attachment No.4, p.1-2

demonstrate facts sufficient to show entitlement to Summary Judgment. There is no legitimate basis to oppose that motion.

I know that you feel strongly that the decision to terminate you was discriminatory. And it may have been. However, there have been no facts set forth in the record at the Division of Human Rights or in this court case that supports that position.

In order to settle this and to avoid the time and expense of making that motion, it is possible that Utica National will agree to pay you a sum equal to their cost to make the motion. The sum of money appropriate at this juncture is in the range of $5,000.00 to $8,000.00. I have not discussed your case with their attorney since the deposition, but they know that this is the cost to make a motion and obtain a ruling.

Grazyna Page2

It is my recommendation that you authorize me to engage in that discussion with their attorney in the hope that they will agree to pay some money to avoid the time and expense of making the motion.

Kindly advise me how you wish to proceed.

Very truly yours,
s/
Stefan D. Berg

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.1-2

[Picture]
Frances.Richards@UTICANATIONAL.COM
01/29/2002 11:04 AM
To: Grazyna.Christman@ UTICANATIONAL.COM
cc:
bcc:
Subject: Reorganization

Date: Tuesday, 29 January 2002 11:04 =am ET
To: AP/Purchasing/Tax, Credit.Collections, Data.Management, Financial Reporting, Research
Cc: Rick.Beideleman@UTICANATIONAL.COM, Werner.Franz
From: Frances.Richards@UTICANATIONAL.COM
Subject: Reorganization
Please see the attached memo from Tony.
----- (SEGMENT 4 IS UNVIEWABLE PC ATTACHMENT NAMED REORGANI.DOC

1

Utica National Insurance Group
Memo
To: Finance Staff
From Tony Paolozzi
[Handwritten] FORMULA PULLS THE DATE WHEN PRINTED → Date: 05/25/2004

First, I would like to address with you the recent correspondence from Mr. Robinson regarding our results, issues facing our company, and staffing

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.2

changes that are necessary. In time like this, difficult decisions have to be made. You are probably wondering if any jobs in the Finance Department will be affected. Goals were established for each major department to bring the company's salary budget to an acceptable percentage of premium income. While it may not be immediately evident, it is important for you to know that our department was able to accomplish our established goal without affecting current employees. In developing the salary budget, it was decided that my previous position would not be replaced and a vacancy in Credit & Collections was eliminated. I am sure that you feel as good as I do about this.

I also want to advise you of a reorganization within the Finance Department that will be taking place later this year. Over the past three years we have had two outside consultants review our reinsurance function. Both observed that there is not one department entirely responsible for all aspects and therefore accountable for performance and profitability. Both recommended that we should centralize, within the Reinsurance Department, the implementation and ongoing administration responsibilities currently in Financial Reporting. These include implementing new/changes to reinsurance contracts, settlement of premiums (facultative & treaty), billing and collection of losses, profit commission determination, profitability

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.2-3

analysis, preparation of annual statement schedules, commutations and probably some others. This reorganization will put, entirely within the Reinsurance Department, the responsibilities starting with contract negotiation to implementation to administration. This should benefit us by improving contract negotiation, communications, reinsurance analysis, enhancing accountability and eliminate the current disconnect

• Page 1 2

that happens at times because the entire process is separated. This would of course mean reassigning staff currently in Financial Reporting to the Reinsurance Department. In addition, a new position, in place of Werner Franz (who is retiring 3/1), has been established which will oversee much of these responsibilities and supervise the staff reassigned. Mike Evolo, who was previously underwriting supervisor in ERO, will be taking this new position effective immediately. Mike's experience in commercial underwriting and his accounting education makes him an excellent addition to the reinsurance function. Since Mike needs to get "up to speed" in reinsurance, we are going to hold off the reassignment of responsibilities and staff until later this year. In addition, since much of the work will continue to support our financial statement process, the reinsurance Department will be accommodated on the sixth floor. To accomplish this, IT Systems will

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-1
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/29/02 Memo
Exhibit 6, p.3

need to be relocated.
It was my desire to deliver this in person, but I am out of the office on personal business and I did not want you to hear this by way of the "grape vine". I know change is something difficult and always present challenges. I am confident the people directly involved are up to the challenges and will be successful. I hope they can count on everyone's support during the transition. If anyone has any questions about either issue please feel free to come see me.
Thanks. Tony.
• Page 2 3

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.1

STATE OF NEW YORK
FIFTH JUDICIAL DISTRICT
SUPREME COURT COUNTY OF ONEIDA
* * * * * * * * * * * * * * * * * *
GRAZYNA H. CHRISTMAN
Plaintiff
-vs- Case No. 6:06-cv-1392
UTICA NATIONAL INSURANCE GROUP, INC.,
Defendant
* * * * * * * * * * * * * * * * * *

HELD AT: GETNICK LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP
258 Genesee Street
Utica, New York
November 7, 2007

EXAMINATION BEFORE THE TRIAL of GRAZYNA H. CHRISTMAN, taken by the Plaintiff, pursuant to Notice.

APPEARANCES:

STEFAN D. BERG, ESQ.
Attorney for Plaintiff
309 Arnold Avenue
Syracuse, New York 13210
GETNICK, LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.1,30

Attorneys for Defendant
258 Genesee Street
Utica, New York 13502
BY: JOSEPH A. DETRAGLIA, ESQ., of Counsel

30

A. I couldn't understand why my performance review was prepared the way it was prepared, why the annual review didn't meet expectations, why I didn't get the raise. I questioned it. I wanted to elevate it to the higher level. I was told by Michael to keep in mind the ramifications of my job if I do that. All of the situations like that basically made me get to the point where I wasn't able to deal with it on my own.

Q. Did you say, at that time, to your healthcare providers that you thought the company was trying to get rid of you because of your age?

A. I don't recall it.

Q. Do you recall if you told your healthcare providers

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.30,32

that you felt the company was trying to get rid of you because
of your gender, being a woman?
A. I probably explained that the department has only
three employees, the three younger males and the older one,
the female. I did express that in July when I was left out of
the participation in the survey. I did put in the reply, in
the e-mail to Michael, that the choice of the participants.
felt somewhat discriminative to me based on the fact that we
had only three employees and he chose two males and the
younger employees. I didn't say directly, but I had my
concerns.
Q. Do you know, was he obligated to give you that
survey to fill out?

32

A. I did put it in the e-mail that's how I felt.
Q. And you still feel that way?
A. Yes,
Q. And it was discriminatory because of what?
A. The evaluation was to – The purpose of the

Appendix D
Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.32

survey
was to give a picture – an evaluation of Evolo's performance
as a manager, a supervisor. And there were only three direct
reports, two male employees and myself. The explanation that
I received was that he wanted to give it a wider scope, so he
selected someone outside of the department. My question was
that why wasn't it a woman from within the department, a male
and a female, or the youngest and the oldest, or the middle
and the oldest, the selection. I questioned his choice,
basically.
Q. So you were the only female of the three of you?
A. In Evolo's department.
Q. So you think it might have been discriminatory
because two males were given the survey, but you weren't as
the female?
A. I was left out.
Q. Do you think you were left out because of your age?
A. Yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.32-33

23 Q. Do you think you were left out because of your .
24 medical condition?
25 A. In the case of the survey?

33

1 Q. Yes.
2 A. I don't know that.
3 Q. Do you believe that was the case?
4 A. Could be, I cannot answer that question.
5 Q. Did you fill out the survey?
6 A. Yes. I did it like three weeks after the deadline.
7 Q. Do you know what happened with your survey after you
8 filled it out?
9 A. I was told that it was included in the results.
10 Q. At what point in your employment with Utica Mutual
11 did you first feel discriminated against?
12 A. I started questioning the things which were
13 happening, the evaluations, the facts which I was presented
14 with, which were not describing my performance in the best
15 light, in May 2004, after or during the nine-months normal
16 review through the end of the employment.
17 Q. Let me ask this, then: Prior to 2004, did

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.33-34

you feel
18 the company was discriminating against you in any way?
19 A. What I felt was that Michael Evolo was
20 discriminating against me. Michael was employed by the
21 company as my supervisor.
22 Q. And when did you begin working under Mr. Evolo?
23 A. In 2002.
24 Q. How soon after you began working under Mr. Evolo did
25 you feel you were being discriminated against?

34

1 A. My first concern was in May of 2003. That was when
2 the promotion to Senior accountant – the promotion went to
3 one of my co-workers who was promoted to a Senior Accountant.
4 At that point, I was questioning the merits. At that point, I
5 had brought the company over a quarter of a million dollars in
6 contingent commission due from Hartford Steam Boiler. That
7 was recognized by the upper management, Rick Beidleman, who
8 was Michael's supervisor, the Director of

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiffs Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.34-35

Reinsurance. It was
recognized by other individuals in upper management. Mr.
Beidleman stated that thanks to my initiative, that
perseverance, the company would be receiving the contingent,
which went back far to 1998, 1999 and was originally accrued
for $85,000 and the company ended up receiving over $300,000,
not a quarter but one-third of a million.
Q. Did you say that was in May 2003?
A. That was in January, February.
Q. Of 2003?
A. Right. The promotion of the male employee was in
March, and it was advertised, let known in the company paper
in May.
Q. Did you receive a performance review in 2003?
A. Yes.
Q. What was the rating?
A. It was positive.
Q. What month of 2003?

35

A. August.
Q. That was the first time you felt

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.35

discriminated
against, right?
A. I felt I was bypassed for the promotion. I felt the
merit warranted the promotion, plus my other performance.
Q. What do you mean by your "merit" and your "other
performance"?
A. the contingent commission was a special project that
I spent hours working on with people from Hartford Steam Boiler,
in short, HSB,
Q. Do you think you merited the promotion just based on
that project?
A. No. That was a big accomplishment, which was
recognized by Mike Evolo's superiors. It was merely mentioned
by him in my performance review.
Q. Do you feel you were the most qualified person for
the promotion?
A. What do you mean "the most qualified"?
Q. Do you feel you were more qualified that the person
who received the promotion?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.35-36

A. I felt I was more knowledgeable, and in terms of the qualifications, to a certain degree, yes.
Q. Can you explain what you mean by that?
A. The reinsurance background, the formal insurance courses.

36

Q. That you had or the other –
A. that I had that the other person didn't have. My co-worker signed up right away for the reinsurance course and failed it, and regardless, was promoted.
Q. Did you take the reinsurance course at that time?
A. I did sign up for the reinsurance course in the fall, I believe, 2003.
Q. Did you take the reinsurance course in the fall of 2003?
A. It was a self-study.
Q. And did you complete it?
A. I did take the exam. I didn't pass the exam.
Q. Did you retake the exam?
A. I did sign up again in September of 2004, and in October of 2004, I had to pull out because of my

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.36-37

surgery.
Q. Did you feel that anyone in the company other than
Mr. Evolo was discriminating against you?
A. I was dealing with Michael Evolo, so I didn't really
have a chance to experience any incidents with anyone else. I
reported to Mr. Evolo, and the incidents that took place were
related to interactions with Mr. Evolo.
Q. As you are sitting here right now, today, is there
someone other than Mr. Evolo that you believe discriminated
against you?
A. I don't know the answer to that question.

37

Q. What ways did Mr. Evolo discriminate against you, in
your opinion?
A. I was the oldest employee. The overall perception
is that the older employee is not as effective as the younger
one, is not a computer whiz. The first, thing, I was bypassed
for the promotion. It was given to a younger employee. I was

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.37

declined the learning opportunities which were extended to both younger co-workers. What I mean by that is the trips to New Jersey for the annual meeting with the reinsurance broker, which gave both of my co-workers first-hand experience. They both accompanied Mr. Evolo on the annual trips. I was not included.

Q. Do you know who selected the individuals for those trips?

A. I presume Mr. Evolo.

Q. Earlier, you just said that there is an overall perception about older workers, is that right, what you just testified to?

A. The overall perception about older workers, the stereotype.

Q. Well, are you saying Mr. Evolo had that perception of you?

A. When I started working for Mr. Evolo, I turned fifty in 2002. The fifties, according to a study I did, the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.37-38

25 research is traditionally the year where the employee

38

1 basically doesn't go any further, doesn't advance himself.
2 Q. You did a study or research?
3 A. I did read a book published in 2006, which explains
4 basically aspects of employment of the older employees and the
5 stereotypes in our society.
6 Q. That book, that had to do something to do with age
7 discrimination?
8 A. Yes.
9 Q. Did Mr. Evolo make any comments about your age?
10 A. Mr. Evolo didn't make any direct comments, either
11 directly to me or in front of the other employees when I was
12 present.
13 Q. Did he make comments about your gender being female?
14 A. Not that I can recall right now.
15 Q. Did he make any direct comments about your medical
16 condition?
17 A. Yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.38-39

18 Q. Could you describe, or have you already
19 described those?
20 A. No, there is an incident that I didn't mention.
21 Before my third thyroid surgery, when I was supposed to be schedule
22 for a test to block the nerve, the laryngeal nerve in my
23 throat to see if it basically stopped the cough, I asked for
24 the medical time off. I explained the procedure, and Mr.
25 Evolo's comment was, "Whv wouldn't the doctor's do it in the

39

1 first place, before the surgery, instead of right now?" Mr.
2 Evolo made the comments when I was scheduled for the surgery
3 and I was asking for the time off to drive to Cooperstown for
4 the test or the appointment with the surgeon. Basically, he
5 would make comments like that my scheduling the surgery is not
6 very convenient for the department.
7 Q. Do you know, was it convenient for the department to
8 have you out at that time?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.39-40

A. The department had three employees, three accountants. I was Accountant I, the grade nine. There was an Accountant II, grade eleven, and there was Senior Account, grade thirteen. So I was on the bottom

Q. Well, when did you take your medical leave – Did you take medical leave in 2004?

A. Yes.

Q. When?

A. The surgery was on November 11th, and I was back to work on December 27th.

Q. At that time in 2004, was the end of year a busy time for the reinsurance unit?

A. The end of year is a busy time every year.

Q. Can you just describe what you mean by "end of year"?

A. The reinsurance company has to prepare the financial statements required by the State.

40

Q. And what time of the year? Is there a specific month or months?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.40

A. January, February, after the books are closed.
Q. Would you describe January and February as the busiest time of year in the reinsurance unit?
A. January is the month when the financial statements have to be completed and submitted to the State Department.
Q. So that was – Was that a very busy time, January of 2005?
A. Right, and I was back in January. I was back on December 27th.
Q. Was November and December of 2004 a busy time for the reinsurance unit?
A. It would entail the monthly tasks and the quarterly tasks. Before my disability, I completed a multitude of tasks which were given to me by Mr. Evolo, I did put in may hours of overtime to complete them.
Q. Were there any other comments Mr. Evolo made to you about your medical condition that you believe were

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.40-41

20 discriminatory?
21 A. I cannot recall right now.
22 Q. You just described a comment from Mr. Evolo right
23 before you went for your surgery in November of 2004?
24 A. Right, that it was inconvenient scheduling, the
25 scheduling to remove the growth on my thyroid.

41

1 Q. I ask you to look at Exhibit C again, your third
2 paragraph at the bottom of the first page, that you believe
3 that the reason given for the dismissal decision of poor job
4 performance, you believe that decision was reached by Mr.
5 Evolo by, and I quote, "holding me to a different standard of
6 job performance than my comparably situated younger male
7 co-workers." Is that your belief?
8 A. The poor performance – poor job performance was the
9 pretext for my dismissal. Mr. Evolo held me to a different
10 standard of job performance than my co-workers.
11 Q. If it was a pretext, then what was the real

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.41-42

reason
for your dismissal?
A. Age and my medical condition.
Q. And who are the comparably situated younger male
co-workers?
A. Josh Watkins. Accountant II, and David Raga, Senior
Accountant.
Q. And how did Mr. Evolo hold you to a different
standard of job performance than those two individuals?
A. One of the examples would be flexibility offered
to – extended to younger employees in regard to their
completions of the reinsurance ARe designation. After I had to
pull out, withdraw from the study in the fall of 2004,
Mr. Evolo insisted that I immediately sign up in January right
after my surgery. My co-workers were extended the flexibility

42

to take years to complete it.
Q. Now, in your opinion, working as an accountant in

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.42

the reinsurance department, would the ARe designation have
been helpful for your job.
A. Yes.
Q. But why didn't you want to sign up again in January
2005?
A. I was back from my surgery and we had the financial
statements to complete.
Q. When did you plan on – Did you ever plan on signing
up for that?
A. yes, I let Mr. Evolo know that I would do it later
in the year in 2005.
Q. Do you know if the other two individuals received
that designation?
A. To my knowledge, they didn't.
Q. Were there other ways Mr. Evolo held you
to a different standard of job performance than those two
individuals?
A. My mind is blank right now. Can we take a break, or
is it lunch time? Oh. I have to answer the question.
Q. Well, as best as you can.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.42-43

23. A. The other standards that were different that the
24 younger employees? I wasn't offered the same learning
25 opportunity. The job descriptions that explained what were

43

1 the responsibilities of each position and what were the
2 requirements of the position in terms of credentials and
3 the experience. My credentials, my experience, were not
4 recognized in any way. My co-workers were. The tasks that
5 were assigned to me to complete were actually the tasks to be
6 completed by the accountant that worked independently.
7 Accountant I was supposed to work under the guidelines of
8 Accountant II or the Senior Accountant. I was treated as if I
9 was on the same level, grade-wise, job-wise, as the other two
10 accountants.
11 Q. And just so I am clear, which credentials or
12 experience did you feel that you were not recognized for?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.43-44

A. My MA, Master's Degree.
Q. What was that in?
A. Economics.
Q. Anything else?
A. The Certificate of General Insurance, which I completed in the nineties while at the company, the underwriting courses which gave me the formal insurance and reinsurance background.
Q. Was it your belief that those credentials were not recognized at all by the company?
A. Yes. They were not mentioned in my review at all. They weren't brought up in the meetings. When Josh Watkins was signing up for the next semester at the collage, that was

44

discussed, but at no point was my knowledge or my credentials brought up. When I asked Mr. Evolo if he was aware that I have a degree, his answer was, "No."
Q. Which degree, the Master's?
A. MA.
Q. You say MA in Economics. Is that the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.44

degree?
A. Yes.
Q. Did you feel that you were held to a different
standard of job performance as far as the categories in the
annual performance review?
A. The performance review was a standard form . So this
was a pre-populated form, and basically, the supervisor was
adding the comments and his own evaluation, which I felt was
very subjective in my reviews because of the statements which
Mr. Evolo made. In Mr. Evolo's statement, "I believe that she
does" – that nature of comments. He would put that it was
his impression that he believes that I did something, which
was very subjective. Basically, my performance review was
lacking objectivity.
Q. Did you ever get the opportunity to look at the
performance reviews of the other two individuals?
A. That was forwarded to me by the Division of Human

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.44-45

Rights.
Q. Is it your belief that he was subjective in his
reviews of those two individuals?

45

A. I didn't notice the words used in my review, where
Mr. Evolo said, "To my disbelief, she" – and whatever was the
statement, "I did" or "I feel." It's not an
objective statement. It's a person's perception.
Q. You saw that in you own performance reviewed, right?
A. Right.
Q. Did you see it in the other performance reviews?
A. I didn't notice it.
Q. Any other way you felt that his performance review
of you was more subjective than the other two individuals?
A. Yes. That's how I learned about flexibility
with the deadline for completion of the ARe designation. The
deadline for David Raga was moved from year to year, extended
into 2006, 2008.
Q. And when did you first learn that? By reading the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.45-46

16 evaluations?
17 A. By reading the documents forwarded to me from the
18 Division of Human Rights.
19 Q. Is there any other way that you believe Mr. Evolo
20 held you to different job performance standards than your two
21 co-workers?
22 A. I was – What was different, I was not allowed to
23 ask for help. I was supposed to work on my own, without
24 asking the questions, doing the research on my own, going back
25 to the folders from last year, instead of asking Accountant II

46

1 or Accountant III for help if I wasn't clear on something.
2 Q. Did you ask for help from your two co-workers?
3 A. Yes.
4 Q. Did they give you help?
5 A. No.
6 Q. Ever?
7 A. O cannot say ever or never. The situations where I
8 would ask Accountant II a question, how to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.46

handle something
9 the response would be either in person or via e-mail: " I
10 don't know the answer. I don't handle it," or, "Check with
11 Financial Reporting." Which was the Corporate Accounting.
12 Q. When you say you were not allowed to ask for help,
13 what do you mean by that?
14 A. Mr. Evolo wanted me to do everything on my own
15 without engaging the other team members in exchanging whatever
16 experience they had or clarifying whatever I didn't know. He
17 was giving me the specific instructions to not to ask Josh or
18 David.
19 Q. Is it your belief that Mr. Evolo wanted you to have
20 no interactions with your co-workers?
21 A. No. That's not what I said.
22 Q. Did Mr. Evolo allow you to have interactions with
23 your co-workers?
24 A. Yes.
25 Q. So I'm just trying to clarify. You were allowed to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.47

47

have interactions, but you weren't allowed to help – to ask for help; is that correct.

A. What I was explaining was when a task was assigned to me and it was either new or I wasn't certain about something and I needed clarification, instead of being allowed to ask more experienced Accountant II or Senior Accountant, I was specifically told not to ask them and get the answers from last year's folders.

Q. And was that every time or sometimes? How frequently?

A. It was very frequent.

(Whereupon, a brief recess was taken.)

(The last question and answer were read by the Reporter.)

Q. Ms. Christman, if you could please look at the second page of Exhibit C, there is a paragraph number four. Is that the leadership survey that you have already testified about today that you felt you were excluded from?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.47-48

19 A. Yes.
20 Q. Is there anything more about that that you would
21 like to discuss that you haven't already testified to today?
22 A. Not at the moment regarding the survey, the
23 leadership survey.
24 Q. Paragraph number five, why did you use – or do you
25 believe that the nine-month review was arbitrary?

48

1 A. I had a nine-month performance review which brought
2 up supposedly poor performance or tasks that were not
3 completed or done wrong. And this was the very first one I
4 ever had during my career with Utica national, the review in
5 between the annual review.
6 Q. Until that point, how often did you receive
7 performance reviews?
8 A. On an annual basis.
9 Q. Why did you feel that the nine-month review was an
10 arbitrary review?
11 A. I don't know if I used the term "arbitrary." It

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.48,50

was basically a nine-months review to bring, supposedly,
Evolo's concerns about my performance.
Q. The end of it, paragraph number five, says that no
such review occurred And what does that refer to?
A. The follow-up in thirty days.
Q. Why do you believe that was a problem, or do you
believe that was a problem that it says "No such review
occurred"?
A. Mr. Evolo suggested that we have regular meetings to
monitor my performance improvement, and we had one meeting,
all together.
Q. What meeting was that?
A. I don't recall the day right now. There was one
instance where we discussed it.

50

A. Correct.
Q. If I could ask you to look at the fourth page,
starting around paragraph number twenty-three, is that
statement in paragraph twenty-three that you did receive a

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.50

performance evaluation in August 2003?
A. In 2003, I received an annual performance review.
Q. That's the one I asked you earlier about. What was your rating on that one?
A. In 2003 was "meets."
Q. On a scale of one to five, that was –
A. I believe it's three. The date is a typo on this line. It should be in August of 2004. My nine-month performance review was in 2004. I didn't catch that mistake when I was reading it.
Q. Moving to paragraph twenty-five: "Subsequent to 2003, Mr. Evolo gave Plaintiff performance evaluations which indicated that her performance was declining," and then paragraph twenty-six says: "in fact, Plaintiff's performance did not decline.", is it your belief that your performance did not decline after 2003?
A. My performance did not decline at anytime during my career with Utica.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.50-51

23 Q. How did you measure your own performance, to know
24 whether it was declining or not?
25 A. The job responsibility entailed specific tasks which

51

1 were my monthly, quarterly or annual responsibility, and the
2 timely completion, the final result.
3 Q. How were you informed of your specific tasks to
4 perform?
5 A. Each of us had to submit a list of responsibilities
6 that we had to Mr. Evolo.
7 Q. How often did you submit that list?
8 A. The list wasn't subject to a change. The tasks on
9 the list were submitted once, and again, if tasks were added.
10 But the tasks that were previously on the list of the other
11 accountants, my co-workers, were shifted to me. I was
12 basically performing the job – I was supposed to perform the
13 job on the same level as the higher-situated co-workers.
14 Q. Did you create a list of tasks?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.51-52

A. Yes.
Q. And did your co-workers create lists of tasks?
A. I wouldn't know, because it was sent to us, the request that each one of us submit it. I did submit mine.
Q. Who did you submit that to?
A. Mr. Evolo.
Q. And when did you submit that to him?
A. I believe the last copy I forwarded of the original list was in October of 2004. It was right before my surgery. Mr. Evolo wanted to know what needed to be done in my absence.

52

Q. Why do you say you were asked to perform job duties that were duties that should've been performed by your co-workers?
A. That's not correct statement. The accounting position had three different levels. The lowest was Accountant I, and the responsibility of the Accountant I was to somewhat work with other help, but the Accountant I wasn't

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.52

responsible for entirely finishing on its own the financial statements. The Accountant I was supposed to get help and training and coaching from Senior Accountant and Accountant II. It was part of their job responsibility. The way the tasks were assigned to me, I had to perform the tasks which were described in the position for the Senior or Accountant II. So basically there was no distinction. I was put on he same level and the same type of responsibility was expected of me.

Q. Meaning that you believe that the tasks that you were assigned were of the same level as those assigned to your co-workers?

A. the tasks actually were reassigned from co-workers to me. An example is Commerce Survey, which was originally done by David Raga and became my responsibility.

Q. Did David Raga give you any other tasks to perform?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.52,61

23 A. No. It wasn't David Raga. It was Michael Evolo
24 that gave me the task, not David Raga.
25 Q. Who gave you the Commerce Survey task?

61

1 A. Yes.
2 Q. Is there more you would like to explain at this
3 time?
4 A. Other than what I mentioned earlier. Basically,
5 what was expected of me is perform on the same level as the
6 higher graded co-workers. I was held to a higher standard.
7 Q. When you say that you didn't explain in your
8 rebuttal the disparity treatment, you've explained that today,
9 the feeling like you had to perform at a higher grade that
10 your co-workers were at, you were held to higher standards and
11 weren't given the same flexibility in completing tasks or in
12 furthering your education; is that right?
13 A. No.
14 Q. Well, then, could you please explain?
15 A. I did put in the rebuttal that other workers

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.61-62

were
16 treated differently. I was referring to the statement that
17 younger employees get a different treatment, that I'm only
18 female, the female that has the disability, the medical
19 impairment. It's all throughout the rebuttal in the
20 applicable sections. What I reiterated today was the
21 instances where it is shown being held to a higher standard,
22 having different expectations placed on me. The lack of
23 flexibility with forgoing my education, not recognizing the
24 education that I had, the credentials, not recognizing any of
25 the positive tasks that were completed. Anything that's

62

1 brought up is just the negative, but not the – Basically, the
2 picture presented by Michael Evolo is an isolated. It's a
3 snapshot, not the entire picture
4 Q. The Division of Human Rights gave you the
5 opportunity to submit a rebuttal, right?
6 A. Yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.62

Q. And you did submit a rebuttal?
A. Yes.

Q. And then you did further research on the Internet,
right?
A. Yes.
Q. Are there any other instances where the company
discriminated against you that were not submitted by
you in your paperwork?
A. Michael Evolo discriminated against me. Michael
Evolo worked for the company. The company was vicariously
liable for his actions as he was engaged in a managerial
capacity.
Q. Have you described today all the discriminatory acts
that Michael Evolo took against you?
A. To my best recollection right now. Can I add
something?
Q. Yes, you can.
A. There is one thing I forgot. In regard to the
actual probation, the way it was administered to younger

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.63

63

employee to the older employee. I was placed on probation and
fired thirty days later, or a month and a half. The other
co-worker was placed on probation twice and taken off twice
and given much longer time for improvement in performance. I
was given thirty days. The younger employee was given six
months on the first one, I believe, or twelve month on the
second, or vice-versa. I don't recall exactly.
Q. Do you know which younger employee co-worker?
A. Josh Watkins.
Q. Do you know if he is still employed by the company?
A. I don't know.
(Defendant Exhibit G marked for Identification.)
Q. Please take a look at this document, Exhibit G, and
let me know when you are done.
A. Okay.
Q. Is this the August 2003 performance review that you
have already testified about today?
A. We discussed some of the aspects, yes.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.63,67

20 Q. But this is your annual performance review for 2003,
21 correct?
22. A. Correct,
23. Q. And on page 5, at the bottom, it has
24 overall rating?
25 A. Its rating is: "Meets expectations for the

67

1 describe what this document is?
2 A, Mr. Evolo prepared for me a nine-month performance
3 review in May of 2004.
4 Q. is there anything inaccurate in this performance
5 review?
6 A. The examples in this performance review were taken
7 out of context. Those were selectively chosen examples
8 which do not present the entire picture, the complete picture.
9 Q. What is missing in order to complete the picture?
10 A. Basically, each item requires more detail to
11 present – to explain what has happened. The statement that
12 the settlements were not completed by me is not accurate, for
13 the reason that, at that time, in the beginning of

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.67,70

2004, the
14 accountant, all three of us, were specifically instructed by
15 Michael Evolo to put everything on hold and concentrate
16 on the Schedule F. Here it says: "This is one of your
17 responsibilities that is expected to be completed in a timely
18 fashion."
19 Q. Is this the first page?
20 A. Yes. It says: "Completion of the contract
21 settlements should be a priority." Now, as far back as they
22 go in the files, the files for the prior years, those were
23 always completed around the end of February, March.
24 Q. Is there anything else inaccurate in this?
25 A. The statements are very subjective and not accurate.

70

1 believe Mr. Evolo's May 11, 2004 performance review was not a
2 complete picture of your performance?
3 A. This document explains what has happened, meaning
4 that when Mr. Evolo referred to the statement that I failed to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.70

prepare the part A for the Utica Specialty Risk and Lloyds, I explained that I was not aware that the word "non" had become a part of the annual statement. Out of the three accountants in the reinsurance department, I was the one who had the least experience or smallest part or percentage exposed to the Schedule F prior to reorganization. The reply was that I asked help with handling of time-sensitive tasks.

Q. Well, again, this was your response to his written May 11, 2004 performance review, right? Is that right?

A. Those were the comments to the issues the issues addressed by Michael Evolo in my nine-months' review.

Q. You prepared it in a short time after you received his May 11th performance review?

A. It took me actually two weeks. I was on vacation the last week in may. I did it on my time at home

Q. And what was your purpose in giving this document to Mr. Evolo?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.70-71

22 A. In my opinion, the eleven-month evaluation was not
23 accurate. It did not present my performance, It was
24 distorted. It addressed the selectively chosen examples.
25 Q. Is there anything more that you are thinking of

71

1 today that you would add to this document to illustrate why
2 the May 11, 2004 review was inaccurate?
3 A. I did attempt to do it by a continuation in the next
4 reply. I, all along, didn't get the answer of what I am doing
5 wrong and what is happening, and I was questioning it. Since
6 the promotion of the younger male co-worker to the Senior
7 Accountant back in 2003, my earning the company $330.000,
8 one-third of a million, I started questioning what is going
9 on. I started wondering. The purpose of it was to get
10 answers to my questions, to my concerns.
11 Q. Is there anything more that you would add today to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.71-72

this document in order to explain why your disagreed with the
May 11, 2004 review?
A. The document explains the inaccuracy of the
statement put in the May 11th of 2004, where the facts were
either distorted or not complete. That pertains to conflicts
with my Fleet employment, where I explained that out of my own
initiative, I arranged with Fleet for the vacation time, the
days of on the weekends, so I could come and work on the
Schedule F. I explained that I put in over one hundred hours
of overtime. I put overtime as the younger co-workers did. I
did contribute to Schedule F equally, because each of us
handled different aspects of the Schedule F.
Mr. DETRAGLIA: Okay. If we can mark Exhibit
J, please.

72

(Defendant Exhibit J marked for
Identification.)
Q. Can you take a look at exhibit J and let me know

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.72

when you are finished?
A. Okay.
Q. Could you describe what that document is, please?
A. This is Michael Evolo's performance response dated
June 8, 2004. It's in response to my response, which I gave
to him on June 7th and ties with the performance discussion on
May 11th, and Michael Evolo is offering the following
commentary. And basically, it's a reiteration of what was put
in the May 11th performance review.
Q. Do you believe the items listed in this document,
then, are inaccurate?
A. one of them, yes.
Q. which one is that?
A. "We sent you to Access training last year."
Q. You didn't have Access training in the year 2003?
A. No, I took it in '91, '92.
Okay. Anything else inaccurate?
Michael Evolo refers here to comments from both
internal and external customers. There were occasions when I

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.72-73

23 asked for examples. I was never provided with the examples.
24 The company had me take the harassment test, which basically
25 profiled how the traits of my personality can benefit the job,

73

1 if it's compatible or not. The tests how the traits, both
2 strong and weak. The comments and the response are not
3 consistent with the harassment review about my personality
4 traits. I would like to add one thing here in regard to
5 part-time employment, "If you have a conflict with Fleet, you
6 must take it up with them." I mentioned before that my
7 co-workers had the flexibility with the overtime. This was
8 the one instance when I asked if on a Saturday – it was the
9 last Saturday in January, that instead of the morning, if I
10 can come in the afternoon. And the immediate response – it
11 was in front of David Raga and Josh Watkins, Mr. Evolo's

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.73-74

immediate response was, "You may have to call them sick." The related accident report is the report that I mentioned earlier, that I was unable to accomplish the tasks, even though related accident claims were handled by Josh and David. I successfully created report for the very first time from the database of about ten thousand records or so and selected the items that Michael wanted to put in. I have never done it before, so that was completed successfully. In this response, again, it's in my review, it's inaccurate statement, so Michael Evolo is using a very biased – is very subjective. He basically presents his point of view. It is not an objective evaluation.

(A brief recess was taken.)

(Defendant's Exhibit K was marked for

74

Identification.)

Q. If you could please take a look at that document and

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.74

let me know when you are done reviewing it.
A. I did review it.
Q. And what is that document?
A. This is the evaluation of my performance prepared by
Michael Evolo on July 22, 2004. It's an annual review.
Q. In your opinion, is this a biased review of your job
performance?
A. In my opinion, yes.
Q. And can you briefly describe how so?
A. This is the first review that I received after
fourteen years of the positive, "Meets or exceeds" review, the
rating. It's a positive, the one a year earlier prepared by
Michael Evolo. It's rated "Does not meet the job
expectations. " It has the subjective statements I saw on the
pages here, "To my disbelief" and "My opinion." "To my
disbelief, she began working on the project immediately."
This goes with the statement in regard to the PROCEDE
assignment. And in this evaluation, Michael recommends that I
try pursuit of the ARe designation r right away,

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.74-75

and after I
failed it in November '03, it is recommended that I try it
right away, and he states, "This was not done and reflects her
lack of interest and commitment." I did explain that I would
sign up later in that year. The working relationship is

75

evaluated "Good" a year earlier to the lowest score. I am not
aware of a situation where my behavior was disruptive to the
entire department. Michael stated that, "I have explained to
her that I will not tolerate another occurrence. I will
initiate formal disciplinary action should this occur. I have
spoken to a number of Grazyna's external customers and some of
them expressed similar concerns for her abrupt tone and tenor
and her unwillingness to be flexible." Those are not correct
statements.
Q. And on the pages seven, eight and nine, are those a

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.75,78

11 performance plan of action?
12 A. The entire performance review is prepared by Michael
13 Evolo, yes, and that's what he put in the plan of action and
14 objectives.
15 Q. And on page ten, those are his additional; comments?
16 A. Yes.
17 Q. And then, you began writing employee comments and it
18 says: "Continued on another page"?
19 A. Correct, and there were fifty-nine of them.
20 Q. Let me just make sure that – the date of 7/22/04 at
21 the bottom of page ten, what happened on that date?
22 A. It was the date of the performance review.
23 Q And you respond with a fifty-nine page response?
24 MR. DETRAGLIA: I'm going to go ahead and mark
25 it. It's in. We'll have that be "L."

78

1 memorandum?
2 A. To my best recollection, I did it in November, the
3 day before my surgery, when I sent an e-mail with an

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.78

attachment to Mike Evolo.
(Defendant's Exhibit N marked for Identification.)
Q. If you could look at Exhibit N and let me know if you recognize that.
A. Yes, I do recognize it. This was the reply for the comments about my performance review sent electronically to Michael Evolo, written by Nina Owens in Human Resources, commenting on my response – the fifty-nine page response, in August 2004.
MR. BERG: Is this an e-mail?
THE WITNESS: Yes, and this is an attachment to the e-mail.
(Defendant's Exhibit O marked for Identification.)
Q. Do you recognize exhibit O?
A. Yes.
Q. What is it?
A. A memo prepared by Michael Evolo in response to my memo dated November 10. This was presented to me in the meeting in person by Michael Evolo and Dane

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.78-79

Austin. Dane
25 Austin told me to consider it a formal probation, the memo

79

1 included the follow up in thirty days.
2 Q. And do you remember actually receiving that
3 document?
4 A. It was handed to me in the conference room, in
5 person.
6 Q. Who else was in the room?
7 A. Michael Evolo and Dane Austin.
8 Q. Anyone else?
9 A. No. This was handed to me a week after I came back
10 from the disability.
11 Q. Did you prepare a written response to that January
12 6, 2005 memo?
13 A. Yes.
14 (Defendant's Exhibit P marked for
15 Identification.)
16 Q. Could you take a look at Exhibit P and let me know
17 if you recognize it?
18 A. Yes. This is the response to the warning handed to
19 me by Dane Austin on January 6th. It is dated

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.79-80

February 4th,
which was, I believe Friday, if I recall well. I know exactly thirty days would fall on the weekend, so I dated it the business date. It has attachments showing the actual facts about the statement in the memo handed to me on January 6th.

Q. Now, did you deliver this to anyone, Exhibit P?

80

A. On February 21st, I received a call at ten in the morning from Michael Evolo to step into the Human Resources. I grabbed the folder. I had the response with me. The follow-up meeting never took place. I was carrying it with me waiting for the chance to discuss, and I handed it to Nina, to Dane, one copy each, and one to Michael Evolo. I also handed them the complimentary e-mail from Shawn Douglas, the auditor from Price House Water Cooper, which I received on Friday, the last Friday before Monday, praising me on the excellent job I

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.80-81

did with preparation of the documents for the audit.
Q. Meaning the Friday previous, meaning approximately
February 18th of 2005?
A. Yes. Saturday was the 19th. It was the last
Saturday I worked late at night.
Q. Was there a reason you didn't deliver this document
around the time that it's dated, as of February 4th, 2005?
A. I followed up with Michael Evolo a couple of times on
the follow up meeting, questioning when it will take place,
and basically, it was pushed over and never took place. The
answer was "next week," and next week was the Monday, the
21st.
Q. Why didn't you just give it to him after you
finished it around February 4th?
A. I hoped that we could discuss it. I put on the last
line that I feel confident that if someone took a look at the

81

attached, it would help to put things into perspective. So

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.81

this was my attempt to basically be heard in this case, by the company, to present the issue and present the injustice that is happening. Dane Austin was the new Director of Reinsurance, who replaced Rick Beidleman. He started his duties as of December 1st. I was out on disability, and I really never worked with Dane Austin, never talked to him. He never got a chance to evaluate my performance, so I wanted to basically have a chance to, once again, to try to bring it to somebody's attention.

Q. Is what you're saying is that you wanted somebody on read this?

A. I wanted to discuss it, to show that the statements that are made in the previous nine-months' evaluation, the annual, the follow-up memo, the probation, the 1/6/05 memo, they are not accurate or they are biased.

Q. Okay. The last line you said, "If someone moment to look at the attached, it would help to

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.81-82

put things in
19 perspective." Why didn't you give this to Mr. Evolo, Mr.
20 Austin or Ms. Owens around February 4th, so they would have a
21 chance to look at it?
22 A. I thought it may end up the same way as my request
23 in August of 2004. The issue of my performance review in 2004
24 and lack of raise and does not meet evaluation, that was
25 supposed to go higher than Human Resources, directly to the

82

1 CEO of the company.
2 Q. Could you just explain that further, please?
3 A. I was afraid that it will not take me anywhere. It
4 will be lost like the previous request to escalate my concerns
5 related to the nine-month performance review, the annual
6 performance review in 2004.
7 Q. So you decided you would prefer to hand-deliver it?
8 A. I wanted to discuss it in person when we speak. The
9 date was set up thirty days after the January 6th

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.82

to follow
10 up, and I anticipated the follow up meeting and I wanted to go
11 over it. When I escalated the issue in August of 2004, to
12 Rick Beidleman, at Michael's recommendations to keep in mind
13 the job ramifications if I go above and I bypass them, it
14 really didn't take me anywhere. It wasn't addressed by the
15 company.
16 Q. Can you just flip to the last few pages? Can you
17 recall if – did you attach the January 6, 2005 memo and the
18 August 2004 memo – did you attach those to the back of this
19 document, P?
20 A. To my best recollection, the August memo was part of
21 what was given to me on January 6th.
22 Q. And is that your handwriting on the January 6th
23 memo, near the end of this Exhibit P, the numbers one and
24 four?
25 A. Yes, that's what basically was the reference, where

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.83

I put number one and number two. There should be also four five, six, seven, eight.

Q. Again, was this another attempt by you to show that you believed Mr. Evolo's evaluations were biased?

A. in my opinion, they were biased and inaccurate.

Q. Was preparing this Exhibit P your way of informing the company why you believed it was biased?

A. Those are the facts that backed up my statements. It's not a speculation, those are the facts, the copies of the memos or the tasks that I completed relevant to the statement in the January 6 memo, which showed the bias, the different treatment.

(Defendant's Exhibit Q marked for Identification.)

Q. Could you look at Exhibit Q and let me know if you're familiar with that?

A. Yes. This was part of the documentation I received from the Division of Human Rights.

Q. Now, is it your understanding that the five

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.83-84

bullet
20 point items were mistakes or errors on your part
21 while you were an employee?
22 A. Those are incorrect and inaccurate statements.
23 Q. Are any of them correct, in your opinion?
24 A. I did address them in the rebuttal, one
25 pertinent to the premium for payment from Berkley, and I

84

1 addressed the Commerce Survey. I did not address the other
2 three. I just made a comment that they all are not backed up
3 by the documentation included.
4 Q. What do you mean by that, that the other three are
5 not backed up by the documentation?
6 A. I did not elaborate on all three of them. I just
7 chose two examples, the first two, to show that they are not
8 accurate. The Commerce Survey was reported incorrectly, one
9 of the statements. The premium was reported year-to-date and
10 should have been quarterly. The Commerce Survey required
11 earned premium, which cannot be on a quarterly

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.84-85

basis.
According to the formula, the earned premium is calculated as
of the year-to-date. Otherwise, it would be reported on a
written basis, not earned, and I explained that in the
rebuttal.
Q. And when you say "the rebuttal," that was in the
rebuttal you submitted to the Division of Human Rights?
A. Correct.
Q. The third bullet point regarding Swiss Re contingent
commission calculations, this Exhibit Q says it was done
incorrectly. Is this a true statement?
A. I am not aware of that. If I may add, those
statements were made after I was fired, because the memo is
dated June 28th and looks like it's an e-mail sent to Nina
Owens.

85

Q. Well, I'm wondering, do you know if they were done
correctly?
I inherited the Swiss Re contingent commission as

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiffs Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.85

one of my responsibilities when we moved to Michael Evolo's department, and to my knowledge, everything as set up correctly.

Q. And the fourth bullet point, do you know if there were any errors in the ceded commission regional office allocations as set forth in the fourth bullet point?

A. That particular line refers to details for the journal entry. The surety quarter share settlement was my responsibility, and I was preparing the information for David Raga, and what I did, if I recall it well, instead of putting a credit, I put a debit in parenthesis, or something to that affect, or it would have been the issue of rounding of one penny, which I don't recall exactly at this point, but it was a very minor situation.

Q. the last bullet point, are you familiar with the write-offs on account reconciliations for the reinsurance payable and reinsurance clearing accounts? Do

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.85-86

you know what
those are?
A. I did handle the reinsurance payable, and the
clearing account was used to make sure the payment go through
whenever we cut the checks or sent payment electronically.
Everything was going – all the contracts paid were going in

86

that account, and they were my responsibility, I have no
recollection of what were the items I didn't complete
Mr. BERG: Ms. Grazyna, this is Stefan Berg talking. Have I reviewed with you Plaintiff's Response to Defendant's First Set of Interrogatories?
THE WITNESS: Yes.
MR. BERG: Are the answers set forth in there the answers that you would have set forth if you had
done these yourself and not I?
THE WITNESS: Yes.
MR. DETRAGLIA:And we will mark that as R.
(Defendant's Exhibit R and S marked for Identification.)
MR. BERG: Ms. Christman, Stefan again

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-2
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Christman, Excerpts
Exhibit 13, p.86

speaking. I have shown you Defendant's Request for Documents and Plaintiff's Response to Defendant's Request and I have reviewed with you the responses put forth. Are the responses which I have put forth in Plaintiff's Response to Defendant's First Set Request for Documents the answers you would have put forth if you had done them yourself?

The WITNESS: Yes.

(Defendant's Exhibit T marked for Identification.)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman
Exhibit 14, p.1

EXAMINATION BEFORE TRIAL of the Plaintiff, GRAZYNA H. CHRISTMAN, taken by the Defendant, UTICA NATIONAL INSURANCE GROUP, INC.

ERRATA SHEET

Page	Line	CURRENTLY	SHOULD BE
4	18	2003	2004
4	20	May 11	June 6
6	5	Miss	Mrs.
20	11	Natural Arts and	Master of Arts in
24	16	opened a complained	openly complained
27	2	Raynacha, R-A-Y-N-A-C-H-A	Rayancha, R-A-Y-A-N-C-H-A
28	12	or	and
34	10	, that	and
40	25	scheduling	scheduling of surgery
49	9	wall	ceiling
53	15	an	from
54	13	really	was
54	14	try	was trying
54	15	that experience	the employment
54	21	Raynacha	Rayancha
57	7	Raynacha	Rayancha
56	9	Raynacha	Rayancha
56	17	months	weeks

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman
Exhibit 14, p.1-2

25	56	18	months	weeks

1

	Page	Line	CURRENTLY	SHOULD BE
2	57	5	work	worked
3	60	10	stability	flexibility
4	60	12	it right away were made	them right away
5	60	14	in	to defendant's
6	63	1	to	in comparison to
7	64	25	is	was
8	65	25	'91	'01
9	66	1	'92	'02
10	68	7	Sunday	Saturday
11	70	6	"non"	"none"
12	70	11	asked help	asked for help
13	71	21	as	same as
14	72	19	'91, '92	'01, '02
15	72	24	harassment	Harrison
16	73	3	harassment	Harrison
17	73	14	unable	able
18	73	19	so that	and it
19	74	12	first	first" does not meet"
20	74	13	review	reviews
21	74	25	is	which was
22	75	1	to	is downgraded
23	79	1	included	stipulated
24	80	7	Shawn	Shaunastar
25	83	10	statement	statements

2

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Errata to Transcript Christman
Exhibit 14, p.3

Page	Line	CURRENTLY	SHOULD BE
84	3	included	included in my rebuttal
85	15	affect	effect

s/
Grazyna H. Christman

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant's Termination Notes
Exhibit 109

From: Michael Evolo/UNIG,<Michael Evolo/UNIG@unig>
To: Nina Owens/UNIG
Subject: Grazyna Christman
Date: 02/21/2005 12:03:40 PM

Attachment N1: Grazyna February 2005 additional concern.doc

Nina,
These are the notes I took from this mornings' meeting with you, Dane and Grazyna.
Purpose of the meeting was to terminate Grazyna's employment at Utica National.
I reviewed the lack of noticeable improvement in her performance since the meeting Dane and I had with her on January 6, 2005.
I mentioned that Year End processing was a critical time for us and that there were a number of instances where she provided incorrect accounting information to others and that these errors were unacceptable and below standard. I went on to say that I gave her every opportunity to improve her performance and that she has not done so.
I wrapped up my conversation by saying that we reviewed her lack of performance with HR and that we decided to terminate her employment immediately and that the decision was final.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant's Termination Notes
Exhibit 109

Grazyna handed out what she claimed was a formal response to our January 6th meeting. In addition, she made some remarks: namely that she has been under tremendous pressure from the work environment; admitted committing some errors; has never received any help from her co-workers; she claimed to have simplified many of her job tasks since coming to Reinsurance Department; and, in the last 30 days she claimed that she completed her job tasks on time.
Attached is the most current iteration of the source document listing her deficiencies.

Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insuranc Group
315.734.2544
800.274.1914 Ext. 2544
Fax - 315.734.2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo
Exhibit 81

To: Michael Evolo, Reinsurance
Dane Austin, Reinsurance
Cc: Nina Owens, Human Resources
From: Grazyna Christman, Reinsurance
Date: 02/04/2005
Subject: 01/06/2005 Meeting

I would like to thank Mike and Dane for their time to meet with me and submit the essential documentation to the following:

1) Tammy suggested that I contact IT person about HSB problem and I had complied with it. Before my medical leave last November I asked Mike for help with Tammy's inappropriate comment.
2) To my knowledge PWC auditors were looking for the third quarter reconciliations. I finished them before my surgery and left with Senior Accountant on 11/09/04. I forwarded the second quarter reconciliations to Finance on 08/17/04. I took the full day vacation in place of previously scheduled quarter day due to unexpected personal circumstances. It was approved by Rick and I was not aware of any deadline. Otherwise I would have not taken it.
3) I explained via e-mail to Martha how I handled the annual Surety premium adjustment, asked her for guidance how to correct and provided her with the revised adjustment memo.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo
Exhibit 81

4) The original ERPL block was removed in September. In the e-mail to Martha John explained the circumstances, which delayed premium processing. He also run manual premium bordereaux. I submitted them to Gen Re along with premium payment within time frame stipulated by contract. There was no way for me to recognize that another block prevented October premium processing normally run in November and discovered while I was recovering from surgery.
5) Swiss Re address labels for premiums and reserves bordereaux were in the file, along with Pia's communication, which indicated that reserve reports should be mailed to another person.
6) The journal details for JPW Surety Quota Share incoming wires were easily retrievable from Surety folder. Each quarter settlement in that file indicated the net amounts due from (or to) each participant, broken down further by premium, commission and losses ceded amounts, all of which are essential components to journalize a cash payment received from JPW via wire transfer.
7) I sent 11/09/04 e-mail incorrectly as a result of overwhelming duties, including year-end task, which Mike assigned to me to be finished before my surgery.
8) I indicated debits and credits for 9/22 wire, but

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/04/05 Memo
Exhibit 81

inadvertently typed credits in the incorrect column.

I continuously strive to complete my tasks in a timely and accurate manner and I should not be held responsible for actions of others. I have taken Mike's suggestion not to use e-mails as a communication tool and adopted them to promote face to face interactions with my co-workers. Any time I was asked to help with or handle a task, I have done so willingly and without resistance. I am willing to improve further my efforts toward creating a harmonious relationship with my co-workers. However, the nature of good human relationship implies mutual consideration. I feel confident that if someone took a moment to look at the attached, it would help to put things in perspective.

164

No. (2)

Supreme Court, U.S.
FILED

10-139 JUL 24 2010

OFFICE OF THE CLERK
William K. Suter, Clerk

IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,
Petitioner

v.

UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

GRAZYNA H. CHRISTMAN
Pro Se
450 ELMDALE AVENUE
UTICA, NEW YORK 13502
(315) 733-6687

APPENDIX *(Cont'd)*

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Comparison 1999-2004 Accountant I Ratings
Exhibit 15 (Reformatted Table)

TABLE I. COMPARISON OF 1999-2004 PLAINTIFF'S PERFORMANCE RATINGS [1]

DEPARTMENT	SUPERVISOR
REINSURANCE	M. EVOLO
FINANCIAL REPORTING	D. O'CONNELL
CASH MGMT	C. PUTRELO
BUDGET & COST	J. DAVIS
CREDIT & COLLECTIONS	K. LYONS

YEAR	2004[2]	2003[3]	2002[4]
1. QUALITY	3	3	3
2. PRODUCTIVITY	2	3	3
3. JOB KNOWLEDGE	3	3	3
4. WORKING RELATIONS	1	3	3
5. ATTENDANCE	2	3	3
6. PUNCTUALITY	3	4	4
7. INITIATIVE	2	3	3
8. COMMUNICATION SKILLS	1	3	2
9. CREATIVITY	3	2	3
10. FORMAL REPORTS	-	-	-
TOTAL SCORE	20	27	27
OVERALL RATING	2	3	3
YEAR	2001[5]	2000[6]	1999[7]
1. QUALITY	3	3	3
2. PRODUCTIVITY	3	3	3
3. JOB KNOWLEDGE	3	3	3

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Comparison 1999-2004 Accountant I Ratings
Exhibit 15 (Reformatted Table)

4. WORKING RELATIONS	3	2	2
5. ATTENDANCE	4	4	3
6. PUNCTUALITY	4	3	3
7. INITIATIVE	3	3	3
8. COMMUNICATION SKILLS	3	2	3
9. CREATIVITY	3	3	3
10. FORMAL REPORTS	-	-	-
TOTAL SCORE	29	26	26
OVERALL RATING	3	3	3

1998[8] 1997 1996 1995 1994 1993 1992 1991 1990
Not available

Footnotes:

[1] Plaintiff prepared EXHIBIT 15 Table I. by referring to EXHIBITS annexed to Affidavit of Grazyna H. Christman as follows:
[2] 2004 Review is Plaintiff's EXHIBIT 16; Defendant's Exhibit J
[3] 2003 Review is Plaintiff's EXHIBIT 17; Defendant's Exhibit G
[4] 2002 Review is Plaintiff's EXHIBIT 4
[5] 2001 Review is Plaintiff's EXHIBIT 18
[6] 2000 Review is Plaintiff's EXHIBIT 19
[7] 1999 Review is Plaintiff's EXHIBIT 20
[8] Plaintiff requested copies of reviews 1998 & prior years; Defendant failed to produce

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Comparison 1999-2004 Accountant I Ratings
Exhibit 15 (Original Format)

TABLE 1. COMPARISON OF 1999-2004 PLAINTIFF'S PERFORMANCE RATINGS [1]

DEPARTMENT	REINSURANCE	FINANCIAL REPORTING				CASH MGMT	BUDGET & COST			CREDIT & COLLECTIONS			
SUPERVISOR	M EVOLO	D O'CONNELL				C PUTRELLO	J DAVIS			K LYONS			
YEAR	2004 [2]	2003 [3]	2002 [4]	2001 [5]	2000 [6]	1999 [7]	1998 [8]	1997	1996	1995	1994	1993	1992	1991	1990
1 QUALITY	3	3	3	3	3	3									
2 PRODUCTIVITY		3	3	3	3	3									
3 JOB KNOWLEDGE	3	3	3	3	3	3									
4 WORKING RELATIONSHIPS	1	3	3	3	2	2									
5 ATTENDANCE		3	3	4	4	3									
6 PUNCTUALITY	3	4	4	4	3	3									
7 INITIATIVE	3	3	3	3	3	3									
8 COMMUNICATION SKILLS	1	3	2	3	2	3									
9 CREATIVITY	3	2	3	3	3	3									
10 FORMAL REPORTS	–	–	–	–	–	–									
TOTAL SCORE	20	27	27	29	26	26									
OVERALL RATING		3	3	3	3	3	Not available								

Endnotes

(1) Plaintiff prepared EXHIBIT 13 Table 1 by referring to EXHIBITS annexed to Affidavit of Grazyna H. Christman as follows

(2) 2004 Review is Plaintiff's EXHIBIT 16, Defendant's Exhibit J

(3) 2003 Review is Plaintiff's EXHIBIT 17, Defendant's Exhibit G

(4) 2002 Review is Plaintiff's EXHIBIT 4

(5) 2001 Review is Plaintiff's EXHIBIT 18

(6) 2000 Review is Plaintiff's EXHIBIT 19

(7) 1999 Review is Plaintiff's EXHIBIT 20

(8) Plaintiff requested copies of Reviews 1998 & prior years. Defendant failed to produce

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo
Exhibit 28, p.1

[Stamp] DEFENDANT'S EXHIBIT H 11/07/07 NL
Utica National Insurance Group [logo] Insurance that starts with you
To: Grazyna Christman
Office, Dept.
Date: May 11, 2004
From: Michael Evolo
Office, Dept. Reinsurance
Subject: Grazyna's work performance
The following write-up is a summary identifying certain areas of your performance that need immediate improvement. This feedback is intended for you to recognize and understand how I have viewed your performance in the last 9 months. You must give serious consideration to dedicating additional effort to improve in these outlined areas, prior to your 2004 Performance Review in August.
Productivity – During preparation of Schedule F, you missed the Company print deadline for USR and Lloyds. Your work had to be completed by Sandy Giehl, who keyed in the Affiliate information and Josh Watkins, who keyed in the Part 8 information. You also came perilously close to missing the deadline to file the US Treasury Report, which, had it been filed late, Utica Mutual would have been fined. These deadlines were established well in advance and if you felt that you were not going to complete your work in time you should have discussed it with me. (You did not give me any

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo
Exhibit 28, p.1

advance warning!) You must prioritize your work and use common sense to complete your job tasks. Some additional examples of the need for you to re-evaluate your work priorities:

- The processing of facultative program and individual risk premium payments to reinsurers. Recently, you wanted me to sign a disbursement request giving the authorization for payment of the monthly bill. The GRC disbursement request had a "date out of Utica" of April 30th. The next day you gave me facultative individual risk disbursements that needed to be paid immediately. Obviously, the individual risk disbursements should have been done first, followed by the GRC program business.
- Completion of the Treaty contract settlements or "true-ups" should be a priority. This is of the utmost importance, especially if UMICO is due back $$$. You did not process the settlements for the 2003 PPR or CEoL until after the JPWoods Account Managers meeting in early March, during which the folks from Woods inquired with Rick and me on the status. This is one of your responsibilities and as such it is expected to be completed in a timely fashion.
- Late payment of the HSB January 2004 premium billing. This was not done until HSB called asking for it. It is extremely important that we outperform what our reinsurance partners expect of us. Doing so maintains good working relationships.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
To Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo
Exhibit 28. p.2

- The failure to recognize the need to complete the 1998 and 1999 Swiss Re Contingent Commission calculation. This was just recently done. This calculation has been overdue for a year and its' mishandling is totally unacceptable. (this should have been completed shortly after 12/31/02) $94,477 dollars owed to Utica. Another case of not using common sense.

Working Relationships – Your working relationships with your immediate work team have become strained and as such, have made for a very uncomfortable work setting. I have observed on a number of occasions where your teammates have tried to assist you and you have responded in rude and unfair manner.

I have had to speak with you on two occasions where your working relationship with Josh had reached an intolerable and disturbing level. In fact, your interactions have on occasions have been disruptive to the point that it has gotten reported to me by unrelated third parties. I have told you both that if negative behavior continues, formal disciplinary action would result.

I have spoken to a number of outside customers that have expressed similar concern for you abrupt tone and tenor and your unwillingness to be flexible. I have heard comments such as "rude and demanding" and "its all about Grazyna." You must improve your

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo
Exhibit 28, p.2

ability to work with others. Your attitude is easily translated as confrontational, unwilling to listen or compromise, and selfish.
During year-end processing, you failed to adequately and effectively communicate with Financial Reporting to ensure that your Part 8s reconciled with the Asset page. Financial Reporting made a change after you initially checked, and this subsequent change resulted in your Part 8s being out of balance. You did not call to verify with Sandy, as was suggested by your teammates, to verify that she had not processed any additional changes. This resulted in additional work and a delay in the completion of your responsibilities.
You need to better understand how all little pieces of Schedule F come together. Your demeanor to your follow teammates prevents anyone from sitting down and explaining to you the "bigger picture." You make it difficult on yourself by being so unapproachable. You discourage anyone from offering assistance.
I have and will continue to work with you to aid you in adjusting the way you respond to others. You must be willing to make an effort to correct your delivery and improve your interaction skills with others.
Initiative – I am very disappointed with the way you handled yourself during year-end processing and the completion of Schedule F. In my view, you showed little initiative to work as a team member in assisting your peers in accomplishing the common

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo
Exhibit 28, p.2-3

goal. You seldom went beyond what was clearly defined as your minimum job function, even while your teammates struggled to complete the bulk of the tasks. This included them coming in on Sunday morning (February 1st) to finalize the job.

2

On January 30th, I sat down with you to discuss my expectations that you would need to actively participate in completing Schedule F. That means that on occasion you may be asked to take on additional responsibilities. At that time, I also gave you another copy of your 2003 Performance Review and highlighted the Initiative subsection with a reminder that it was an area you needed to improve in. You responded that you understood what was expected. A month later, I asked you to take on an additional responsibility – completing the Commerce Survey. Although in the end you did complete it, you did challenge me on why you were being asked to complete it and you even went on to say that in your opinion, "others should handle it as they are at a higher pay grade." In my view, this type of response is unacceptable. I expect you to handle additional work and assist teammates without hesitation. We all must pitch in and help. It has become increasingly clear to me that you are interested only in completing your tasks and that you could care less about helping others. Many times your fellow workers have pitched in and stayed late in order to accomplish tasks that

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 05/11/04 Memo
Exhibit 28, p.3

that had been assigned to you.
Another initiative item is your unwillingness to check information before asking someone – the annual Treasury report you completed in March is a good example. Many of the workflow issues you inquired with Josh on were found right in the last year's file – had you only looked.
Communication Skills – You must improve your interpersonal skills as you are often considered confrontational and unapproachable by your peers. I have witnessed this first hand and is a serious enough problem to have been reported to me by a number of outsiders with whom you have contact with.
In closing, during year-end processing, your employment at Fleet Bank directly conflicted with your job responsibilities here and prevented you from committing extra time during the week (Monday through Wednesday) as well as on Saturdays during parts of year-end processing. This will not be tolerated so you must decide which position is more important – I expect that your responsibilities here at Utica Mutual will come first. I will not accept the fact that you cannot commit extra time because your work schedule at Fleet will not permit it. This is not just for year-end processing, but any time during the year when additional effort is needed.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review
Exhibit 17, p.2

Comments: Grazyna needs to understand what she is doing and set appropriate priorities, as she is not getting the important items accomplished. Grazyna missed a number of deadlines this past year – the 2003 PPR and CEoL treaty contract settlements or "true-ups" ($800K+) were not done in a timely manner (this settlements need to be done quickly, especially if Utica is owed money back from reinsurers), the 4th Qtr Gen Re PCat deposit premium was not remitted until GRC requested it, and the collection of the Swiss Re contingent commission billing - $200K+ is still outstanding and should have been resolved months ago. In addition, during year-end preparation of Schedule F, Grazyna missed the Company print deadline for Utica Specialty Risk and Lloyds (this work was eventually completed by others in order to keep with the Company print schedule). Grazyna also came very close to missing the deadline for submitting the '03 US Treasury Report. Given Grazyna's experience in the department, I expect her to use common sense when prioritizing her work.

Job Knowledge:

Give consideration to aspects such as:

- Comprehension
- Retention

□ Has comprehensive knowledge of the job.

□ Has solid understanding of the job. Frequently adds to job knowledge.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review
Exhibit 17, p.2

x Understands the major aspects of the job. Retains learning. Occasionally adds to job knowledge.
□ Does not consistently demonstrate knowledge or major aspects of the job. Repetition of mistakes in some areas results in retraining.
□ Does not demonstrate knowledge of basic job concepts. Continuously repeats mistakes.

Comments: Grazyna has learned most aspects of her current job, however, during the year there were occasions where she didn't understand what should have been done. Common sense (understanding) should prevail when she is completing her tasks. The following are examples of her not understanding what to do – the processing of facultative program and IR premium payments to reinsurers: she did not give the "out of Utica" dates priority. Another example was the 2003 PCat and CEoL contract settlements that were not done timely.

I have asked Grazyna to continue her pursuit of the ARe designation. After she failed ARe 141 in November '03, I recommended that she retry right away. This was not done and reflects her lack of interest and commitment.

Working Relationships:

Give consideration to aspects such as:

- Cooperation
- Ability to work for/with others
- Flexibility

□ Consistently maintains harmonious working

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review
Exhibit 17, p.2-3

relationships with diverse group. Excellent acceptance by others. Consistently communicates well with others.

□ Often establishes harmonious relationships. Very good acceptance by others. Usually communicates well with others.

□ Relationships are generally positive. Good acceptance by others. May communicate well with others

□ Has difficulty in consistently establishing or maintaining harmonious relationships. Has difficulty in communicating with others.

x Poor working relationships requiring frequent supervisory intervention. Consistent difficulty in communicating with others.

2

Comments: This is an area that Grazyna has great difficulty. Her working relationships with her immediate work team have become strained and as such, have made for a very uncomfortable work setting. I have observed on a number of occasions where her teammates have tried to assist her and she reacted in a rude and unfair manner.

I have had to formally speak to Grazyna twice since her last performance review about her inability to work with co-workers. In those meetings, I informed that her behavior was unacceptable and disruptive to the entire department, including others currently working in our department (ProCede IT staff). I have

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review
Exhibit 17, p.3

explained to her that I will not tolerate another occurrence and will initiate formal disciplinary action should it occur.
I have spoken to a number of Grazyna's internal and external customers and some have expressed similar concern for her abrupt tone and tenor, and her unwillingness to be flexible.
Grazyna spends too much time defending herself with a multitude of useless information versus focusing on
the issues at hand and getting the job done. I have discussed with Grazyna that she must improve her working relationships with others and that it must start immediately.
Attendance:
Give consideration to aspects such as:
- Absence
- Lost time since last review (excluding vacation) hrs.

□ Extremely dependable. Outstanding record of attendance and availability.
□ Highly dependable with minimum loss of workdays.
□ Dependable. Absence record does not exceed company guidelines
x Sometimes less than dependable due to frequency of absence. Absence record is moving toward exceeding Company guidelines.
□ Not dependable. Loses considerable time and

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review
Exhibit 17, p.3, 5

work due to absenteeism. Absence record exceeds company guidelines. Disciplinary action required.

Comments: Grazyna has had 6 sick days since her last performance review on August 14, 2003. Grazyna must understand that she is expected to put in overtime when we need her. Her job at Fleet can not interfere with the Schedule's timeline or any special projects when/if they come up.

Punctuality:

□ Extremely punctual. Consistently ready to begin work at the appointed time.

□ Very punctual. Usually ready for start of work.

x Punctual. Lateness does not exceed company guidelines.

□ Consistently not ready for start of work. Frequent occurrences of shortened work periods (including return from break, lunch, etc.) Lateness record is moving toward exceeding company guidelines.

□ Occasionally not ready for start of work (including return from break, lunch, etc.) exceeds company guidelines. Disciplinary action required.

Comments: Grazyna is punctual arriving for work and leaving from work.

3

questions

• Effective listening

Comments: Grazyna's interpersonal skills are poor. She consistently has difficulty effectively communicating with her fellow workers and external

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review
Exhibit 17, p.5

customers. She is considered confrontational, rude and unapproachable. I have spoken to her on a number of occasions in an effort to assist her with her delivery skills. I have given her a number of examples of when I felt she was rude. She is in denial. Just recently, I made a suggestion to her in an effort to help her with an assigned imaging project and her remarks to me were, in my view, inappropriate and rude as she quipped that she was "clever", which indicated that she could handle the project without my suggestion.

I have heard her trying to communicate with her teammates and her delivery is typically forceful and demanding.

Grazyna needs to ratchet up her effective listening and comprehension skills – recently she was asked to begin using the ProCede software and I explicitly told her that any work on ProCede was secondary to her normal monthly/quarterly functions and that I would approve the use of overtime to accomplish this additional assignment. She immediately sent an email to me suggesting that I might want to re-assign some of her job tasks to others based on this new project. (I reminded her that I expected her to use OT to accomplish this ProCede assignment. To my disbelief she began working on the ProCede project immediately.

Grazyna needs to do a better job of keeping me informed on "hot topics" such as the overdue items,

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant I - 2004 Review
Exhibit 17, p.5

e.g. Swiss Re contingent commission status, HSB rate verification, etc. I continually need to ask her for the status on assigned items – she must keep me in the loop on all outstanding issues.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.1

Michael Evolo/UNIG
01/18/2005 09:16 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Re: JPW Settlement [attachment]
Grazyna,

They appear to be in line. Pls be sure the math is correct and send to JPWoods.
Thanks –
Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662
[Picture]
Grazyna Christman/UNIG
01/17/2005 01:30 PM
To: Michael Evolo/UNIG@UNIG
cc:
Subject: JPW Settlement
Mike,

I am attaching the settlement calculations for JPWoods Casualty and Property Per Risk.
[Microsoft Excel worksheet] Settle 2004.xls
Please let me know at your earliest convenience, if in

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.1-2 (Reformatted Excel Sheet. p.2)

agreement so that I could forward them to JPWoods.
Thank you!
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662

1

Utica National Insurance Group
Casualty & Property Per Risk XOL Treaties
J.P. Woods & Company, Inc.
US (All Companies & Canada
2004 Combined Statement

US	Canada
Casualty XOL Treaty (1078-82, 3029-30)	
(310,518.48)	2,184.69
Property par Risk XOL Treaty (3047-48)	
(532,370.86)	2536.36
Property per Risk XOL Treaty Run Off (2780-81)	
5,662.72	0.00
Total Due Reinsurers/(Utica Mutual)	
(837,226.62)	4,721.05

r:\lotus\reinsjpwoods\SETTLE 2004

2

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.2 (Original Format)

Utica National Insurance Group
Casualty & Property Per Risk XOL Treaties
J.P. Woods & Company, Inc.
US (All Companies) & Canada
2004 Combined Settlement

	US	Canada
Casualty XOL Treaty (1078-82, 3029-30)	(310,518.48)	2,194.89
Property per Risk XOL Treaty (3047-48)	(532,372.26)	2,536.36
Property per Risk XOL Treaty Run Off (2780-81)	5,662.72	0.00
Total Due Reinsurers/(Utica Mutual)	(837,228.02)	4,731.25

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiffs Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.3 (Reformatted Excel Sheet)

Utica National Insurance Group
Casualty Excess of Loss Treaty
J.P. Woods & Company, Inc.
Final Settlement Line Breakdown
Utica Mutual and its Affiliated Companies
Contract: 1078, 1079, 1080, 1081, 1082, 3029, 3030
2004

Line of Business Subject Premium	US	Canada
Auto Bodily Injury	145,516,893.65	21,859.00
Auto PD	8,904,91.88	0.00
Other Bodily Injury	86,362,377.80	86,487.00
Other PD	0.00	0.00
Glass & Theft	1,461,196.72	0.00
Businessowners (25%)	5,645,916.52	0.00
Condo-Auto	0.00	0.00
Condo-Workers Comp.	0.00	0.00
Condo-All Other	138,850.00	0.00
Fidelity	2,121,501.32	0.00
Homeowners (10%)	4,028.923.70	0.00
Medical Malpractice	32,336.00	0.00
Umbrella-(Personal & Commercial)	14,951,524.13	0.00
Umbrella-Printers	0.00	0.00
Workers Compensation	120,432,064.06	0.00
Workers Comp. (Minnesota-10%)	3,797.35	0.00
W/C Catastrophe Reinsurance Premium	0.00	0.00
Total	389,360,353.13	108,346.00

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.3 (Reformatted Excel Sheet)

Subject Premium	389,360,353.13	108,346.00
Reinsurance Rate (All Layers Combined)	2.0164%	2.0164%
Reinsurance Premium	7,855,901.52	2,184.69
Less: Deposit Premium Paid (4 quarters x $2,041,605)	8,166,420.00	0.00
Net amount Due Reinsurers/(Utica Mutual)	(310,518.48) U.S. Funds	2,184.69 Canadian Funds

(computed on a written basis)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.3 (Original Format)

Utica National Insurance Group
Casualty Excess of Loss Treaty
J.P. Woods & Company, Inc.
Final Settlement Line Breakdown
Utica Mutual and Its Affiliated Companies
Contract 1078 1079, 1080, 1081, 1082, 3029, 3030
2004

Line of Business	US Subject Premium	Canada Subject Premium
Auto Bodily Injury	145 516 893 85	21 659 00
Auto PD	8 804 971 88	0 00
Other Bodily Injury	86 362 377 80	96 487 00
Other PD	0 00	0 00
Glass & Theft	1 461 196 72	0 00
Businessowners (25%)	8 643 616 82	0 00
Condo - Auto	0 00	0 00
Condo - Workers Comp	-	0 00
Condo - All Other	134 850 00	0 00
Fidelity	2 121 601 32	0 00
Homeowners (10%)	4 028 223 70	0 00
Medical Malpractice	32 336 00	0 00
Umbrella - (Personal & Commercial)	14 961 524 13	0 00
Umbrella - Printers	0 00	0 00
Workers Compensation	120 432 084 96	0 00
Workers Comp (Minnesota - 10%)	3 797 35	0 00
WC Catastrophe Reinsurance Premium	0 00	0 00
Total	389 900 383 13	118 346 00
Subject Premium	389 900 383 13	118 346 00
Reinsurance Rate (All Layers Combined)	2 0184%	2 0184%
Reinsurance Premium	7 856 901 62	2 184 89
Less: Deposit Premium Paid (4 quarters X $2,041,665)	8 166 420 00	0 00
Net Amount Due Reinsurer/(Utica Mutual)	(309 518 38)	2 184 89
Remarks or other basis	[illegible]	[illegible]

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.4 (Reformatted Excel Sheet)

Utica National Insurance Group
Property Per Risk Treaty
J.P. Woods & Company, Inc.
Utica Mutual and its Affiliated Companies
Final Settlement Line Breakdown
Contract: 3047, 3048
2004

Line of Business	Subject Premium US	Canada
Allied-Personal	26,258.00	0.00
Allied-Commercial	1,499,254.80	0.00
Fire-Personal	55,984.00	0.00
Fire-Commercial	1,690,855.00	0.00
Inland Marine-Personal	1,720,936.43	0.00
Inland Marine-Commercial	4,792,180.88	0.00
Inland Marine-Lenders Single Interest	0.00	0.00
Businessowners (75%)	18,468,076.54	0.00
Commercial Multi-Peril	77,816,632.86	54,781.00
Condo-Property	959,335.00	0.00
Homeowners-(90%)	36,472,215.60	0.00
Total	143,501,709.31	54,781.00

Subject Matter Premium	143,501,709.31	54,781.00
Reinsurance Rate (All Layers Combined)	4.6300%	4.6300%
Reinsurance Premium	6,644,129.14	2,536.36
Less: Deposit Premium Paid (4 quarters x $1,794,125.00)	7,176,500.00	0.00

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.4 (Reformatted Excel Sheet)

Net Amount Due Reinsurers/(Utica Mutual)
(532,370.86) U.S. Funds 2,536.36 Canadian Funds

(Computed on a earned basis)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.4 (Original Format)

Utica National Insurance Group
Property Per Risk Treaty
J.P. Woods & Company, Inc.
Utica Mutual and its Affiliated Companies
Final Settlement Line Breakdown
Contract 3047/3048
2004

Line of Business	US Subject Premium	Canada Subject Premium
Allied - Personal	28,258.00	0.00
Allied - Commercial	1,499,254.80	0.00
Fire - Personal	66,984.00	0.00
Fire - Commercial	1,890,855.20	0.00
Inland Marine - Personal	1,720,939.43	0.00
Inland Marine - Commercial	4,792,160.68	0.00
Inland Marine - Lenders Single Interest	0.00	0.00
Businessowners (75%)	19,468,078.64	0.00
Commercial Multi-Peril	77,816,632.86	54,781.00
Condo - Property	959,338.00	0.00
Homeowners - (90%)	36,472,215.80	0.00
Total	143,501,709.31	54,781.00
Subject Matter Premium	143,501,709.31	54,781.00
Reinsurance Rate (All Layers Combined)	4.8300%	4.8300%
Reinsurance Premium	6,944,129.14	2,538.36
Less: Deposit Premium Paid (4 quarters X $1,794,125.00)	7,176,500.00	0.00
Net Amount Due Reinsurer/(Due Utica Mutual)	(232,370.86)	2,538.36
(Computed on an earned basis)	U.S. Funds	Canadian Funds

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.5 (Reformatted Excel Sheet)

Utica National Insurance Group
Property Per Risk Treaty
J.P. Woods & Company, Inc.
Utica Mutual and its Affiliated Companies
Final Settlement Line Breakdown
Contract: 2780, 2781 (Run Off)
2004

Line of Business	Subject Premium US	Canada
Allied-Personal	0.00	0.00
Allied-Commercial	305.00	0.00
Fire-Personal	0.00	0.00
Fire-Commercial	(202.00)	0.00
Inland Marine-Personal	0.00	0.00
Inland Marine-Commercial	117,886.24	0.00
Inland Marine-Lenders Single Interest	0.00	0.00
Businessowners (75%)	855.75	0.00
Commercial Multi-Peril	(3,463.00)	0.00
Condo-Property	0.00	0.00
Homeowners-(90%)	(3,249.00)	0.00
Total	112,132.99	0.00

Subject Matter Premium	112,132.99	0.00
Reinsurance Rate (All Layers Combined)	5.0500%	5.0500%
Reinsurance Premium	5,662.72	0.00
Less: Deposit Premium Paid (4 quarters x 0)	0.00	0.00

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.5 (Reformatted Excel Sheet)

Net Amount Due Reinsurers/(Utica Mutual) 5,662.72
U.S. Funds 0.00 Canadian Funds

(Computed on a earned basis)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.5 (Original Excel Sheet)

Utica National Insurance Group
Property Per Risk Treaty
J.P. Woods & Company, Inc.
Utica Mutual and its Affiliated Companies
Final Settlement Line Breakdown
Contract 2760, 2761 (Run Off)
2004

Line of Business	US Subject Premium	Canada Subject Premium
Allied - Personal	0.00	0.00
Allied - Commercial	306.00	0.00
Fire - Personal	0.00	0.00
Fire - Commercial	(202.00)	0.00
Inland Marine - Personal	0.00	0.00
Inland Marine - Commercial	117,838.24	0.00
Inland Marine - Lenders Single Interest	0.00	0.00
Businessowners (75%)	856.75	0.00
Commercial Multi-Peril	(3,483.00)	0.00
Condo - Property	0.00	0.00
Homeowners - (90%)	(3,249.00)	0.00
Total	112,132.99	0.00
Subject Premium	112,132.99	0.00
Reinsurance Rate (All Layers Combined)	5.0500%	5.0500%
Reinsurance Premium	5,662.72	0.00
Less: Deposit Premium Paid (4 quarters x 0)	0.00	0.00
Net Amount Due Reinsurers/(Due Utica Mutual)	5,662.72	0.00
(Computed on an earned basis)	[redacted] (US$ Funds)	(Canadian Funds)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.6

[Picture]
Grazyna Christman/UNIG
11/09/2004 02:14 PM
To: David Raga/UNIG@UNIG, Josh Watkins/UNIG@UNIG
cc: Michael Evolo/UNIG@UNIG
bcc:
Subject: Tasks taken care of today
Josh/David,
Here is what I took care of today (either Finance's schedule is off by a day or the premiums were run a day ahead):
- Ceded Commission Accrual (item #6 on Grazyna's Responsibility list)
- JPWoods Treaty Premiums (item #1)
- prepared Excel files for Natalia to key Commission detail for items paid on earned basis.

I prepared the notes for both Natalia and you – hope you find all in order.

I gave to David copies of all my 3Q04 reconciliations (2180202, 1180202 and 1442002)
I placed a request for printer paper (4 boxes).
Thank you for your help!
Hope to be back in not too long,
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Performance Improvements
Exhibit 100, p.6-7

P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662

6

[Picture]
Grazyna Christman/UNIG
01/28/2005 04:45 PM
To: Richard Semeraro/UNIG@UNIG
cc:
bcc:
Subject: Account Recs
Hi Rick,

This will confirm that I dropped off this afternoon the 4Q04 reconciliations for 2180202, 2180404 and 1442002.
Please call should you have any questions and thank you.
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/17/05 Email
Exhibit 93, p.1

Michael Evolo/UNIG
02/17/2005 10:08 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Fw: U.S. Treasury Dept Filing
Grazyna,

I expect that our Treasury items will accompany the FR [Financial. Reporting] mailing on Tuesday. When will they be ready for Dane to sign?

Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662
---- Forwarded by Michael Evolo/UNIG on 02/17/2005 10:02 AM ----
[Picture]
Martha Dumont/UNIG
02/17/2005 09:56 AM
To: Michael Evolo/UNIG@UNIG
cc: Daniel O'Connell/UNIG@UNIG, Grazyna Christman/UNIG@UNIG
Subject: Re: Treasury Dept Filing [attachment]
This is a request for a status on the information requested below as I prepared checklists that

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/17/05 Email
Exhibit 93, p.1

accompany our documents in our Tuesday mailing Should I state on the form that we are or aren't submitting with our mailing:
1) the Summary of Reinsurance Treaties on All Lines of Business? (This report is due whenever there are changes and not necessarily each year end.)
2) copies of reinsurance agreements for all bonds written with the U.S. Government as the obligee as well as the powers of Attorney-In-Fact on reinsurance agreement forms?
Let me know.
Thanks .md.
Martha E. Dumont, CPA ARe
Martha.cumont@uticanational.com
Phone 315-734-2868
Fax 315-734-2994
Martha Dumont/ UNIG
[Picture]
Martha Dumont/UNIG
01/20/2005 03:06 PM
To: Michael Evolo/UNIG@UNIG
cc: Daniel O'Connell/UNIG@UNIG, Grazyna Christman/UNIG@UNIG
Subject: Treasury Dept Filing

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/19/05 Email
Exhibit 69, p.1

Michael Evolo/UNIG
02/21/2005 07:54 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject:Re: Treasury/Other States[Attachment]
History: This message has been replied to.
Thank you.
Dane's title is Vice President-Director of Reinsurance.
Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662
[Picture]
Grazyna Christman/UNIG
02/19/2005 06:59 PM
To: Michael Evolo/UNIG@UNIG
cc:
Subject: Treasury/Other States
Good evening Mike,

I left on your desk the Treasury Annual and Other States Schedules F, which I had completed tonight. The Treasury Excess Risk was left with you for your review yesterday – it requires Dane's, Mr. Wardley's and Notary Public signatures.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/19/05 Email
Exhibit 69, p.1-2

The Treasury Annual Schedules, both for Utica and RFI were in agreement with Schedules F, Part 3, 4 and 5 respectively.
There is no cross check, however, for the Other States to verify the final adjustments. I completed these Schedules to my best knowledge. Would you please have the more knowledgeable/experienced Accountant, II or Senior, go over the final copies to make sure that they had been done correctly?
At this point the annual Commerce Survey is the only outstanding schedule. It is quite time consuming due to manual process. I will start working on it right away, along with catching up on the monthly tasks. Will you approve overtime, if needed?
Also would you please tell me what designations should follow Dane's name? I need to prepare letters to be included with Other States Schedules, which he will need to sign tomorrow.
Thank you.
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530

2

Utica , NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/19/05 Email
Exhibit 69, p.3

Grazyna Christman/UNIG
02/18/2005 01:00 PM
To: Michael Evolo/UNIG@UNIG
cc:
bcc:
Subject: Treasury/Other States
Mike,

I am going to leave with you shortly the Excess of Risks schedules for Utica and RFI. Please review and have Dane sign them at your earliest convenience. These scheduled also require Mr. Wardley's signature and need to be notarized before being forwarded to Financial Reporting.
Should you have any questions, I will be happy to answer when I come back from the Business Plan meeting.
Thank you.
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica , NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/06/05 Memo
Exhibit 34, p.1

[Stamp] DEFENDANT'S EXHIBIT O 11/7/07 NL
Utica National Insurance Group [logo] Insurance that starts with you
To: Grazyna Christman
Office, Dept. Reinsurance
Date: January 6, 2005
From: Michael Evolo
Office, Dept. Reinsurance
Subject: Grazyna's Performance Review memo dated 11/10/04

This is my response to your memo dated 11/10/04. As was mentioned in my write-up dated 8/10/04, "Additional Comments-2004 Performance Review" (copy attached), we need to focus our efforts on your need to improve your performance. In your 2004 Performance Review, I provided you with meaningful suggestions to improve your performance and I outlined what you needed to accomplish going forward. To date, there has been no noticeable improvement.

Working Relationships
You continue to be ineffective in building working relationships with your co-workers and there has been no improvement. Since your last performance review there have been a number of instances where your interaction with your coworkers has led to confrontation. Tammy McCoy attempted to assist you

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/06/05 Memo
Exhibit 34, p.1

with the HSB database. Her suggestions to you were met with resistance and no working solutions could be accomplished until I intervened. This was a seemingly simple task, however, it's mishandling on your part created additional work for others and friction between you and the ProCede team.
On August 17th I addressed with you a conversation we had about account reconciliations and your verbal comment (heard by others) about one of your co-workers "distracting" you with his question on your account reconciliations. Clearly, not the proper choice of words expected from someone trying to build relationships with their co-workers.
You continue to foster discord between you and your co-workers. There has been no improvement in your Working Relationships.

Quality
During October processing, you failed to recognize and notify John Constabile that he hadn't removed the system block for the ERPLI sessions. You should have caught this and notified John, but you didn't. Your oversight has led to another month's processing of incorrect premium cessions, which may negatively impact our ceding relationship with reinsurers due to our lack of credibility.
Before you left for surgery, I specifically asked you to leave explicit instructions with your co-workers on how to handle your job tasks in your absence.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/06/05 Memo
Exhibit 34, p.1-2

Contrary to what I asked, you did not leave specific directions on where to send the Swiss Re premium reports. There was nothing in your file that

1

specifically addressed premium reports. Your file did have an address, however, we couldn't be sure it wasn't a lockbox address. Not sending this report on time to Swiss Re could negatively impact our working relationship with them – to the point where it may result in transactional audit or even negatively impact the underwriting rates. You also did not give Wire Transfer allocations instructions on how to appropriate the incoming funds from JPWoods. During your absence, I got involved in the facultative billing situation that involved your sending incorrect supporting data to the wrong person at the wrong company. You sent the DirectFac information to Michelle Thompson, who works for BF Re. It should have gone to Cathy Morency, who works at DirectFac.

Job Knowledge

You never sent your 2nd quarter premium account reconciliations to Financial Reporting, as you are required to. This was discovered when Price Waterhouse Coopers asked for them during the week of November 15th.

Details surrounding a Surety Wire Transfer on 9/22/04 reflected your failure to distinguish between

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/06/05 Memo
Exhibit 34, p.2

a credit and debit.
Martha Dumont requires that the Surety premium numbers be broken out by company; however, Martha needed to ask you to send them. As this is not a new procedure, you should have known what is required.

Productivity
I requested that you complete the clean up of your old account reconciliations by August 9th. These were not completed by the date I requested, and you took unscheduled vacation time prior to the deadline.

Grazyna, you must give your lack of performance priority - especially in the areas I have outlined. To date your performance is unacceptable and that is a very serious matter. I strongly suggest you re-read what I wrote in your Performance review as it outlines explicitly what you need to improve.

This document is considered a written warning and your failure to improve and sustain positive performance in this and other related areas will lead to further disciplinary action up to and including termination of your employment. I have outlined below areas that need your immediate attention.

- Working relationships – Your working relationships with others must improve. You must

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7:1 Response Filed 05/28/08
Defendant 01/06/05 Memo
Exhibit 34, p.2-3

create an environment from which your co-workers want to work with you. This will be measured on your ability to work with them and to avoid confrontational situations. My expectation is that you will not withdraw from working with them, but openly and genuinely assist them and the team in meeting our goals. It is imperative that your interactions are positive

2

and that relationship building occurs during your daily routine. Year-end processing will afford you many opportunities to build your working relationships.

• Quality – Your job responsibilities haven't changes over the last few years and as such you should be very familiar with the process and the responsibilities that go with your job tasks. I expect your work to be error-free. You will need to review your work carefully, however, your review for accuracy should not impede your efficiency to get your job tasks done in a timely fashion. I will measure your success in this critical area by your ability to complete your job tasks and other job assignments accurately and on a timely basis.
• Job Knowledge – You must take an active role in understanding and contributing to the completion of Schedule F. This will mean that you will need to take on additional job responsibilities, in many cases

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 01/06/05 Memo
Exhibit 34, p.3

without waiting to be asked, to ensure we meet our Year End goals. I expect you will take the initiative to learn what is required, go about getting what is needed, and then completing tasks without relying on others for all the answers.

• Productivity – During last year's year-end processing you failed to complete some of your responsibilities within the established deadlines. This will not be tolerated again. You must understand and adhere to the predetermined 154a prioritizing your work. All deadlines must be met.

I will conduct a follow-up evaluation in 30 days to assess your progress toward improvement.

3

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR Rebuttal-Plaintiff Sick & Overtime, p.21
Exhibit 87

Michael added his comments:
"Grazyna has had 6 sick days since her last performance review on August 14, 2003. Grazyna must understand that she is expected to put in overtime when we need her. Her job at Fleet can not interfere with the Schedule's timeline or any special projects when/if they come up."
I worked part time as Telephone Banking Associate at Fleet Bank, (currently Bank of America) since my divorce in April 1996. However, my full time employment with the Utica National Insurance Group had always been my utmost priority, from the first day, when I started in June 1990 up to and including the last day in February 2005, when I was wrongfully dismissed.
The table below gives the summary of my sick time and overtime record for the past eight (8) years based on August 2nd as my Anniversary date:

GRAZYNA'S SICKTIME & OVERTIME RECORD

EVALUATION PERIOD		SICK TIME		OVERTIME	
From	To	Occurrences	Days	Hours	Days
2004	2005 (1)	2	2.0	158.75	21.9
2003	2004	4	5.0	106.75	14.7
2002	2003	3	2.8	176.25	24.3
2001	2002	1	1.0	83.00	11.4
2000	2001	5	5.8	56.25	7.8
1999	2000	4	6.2	8.50	1.2
1998	1999	0	0.0	8.92	1.2
1997	1998	3	3.0	0.00	0.0

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR Rebuttal-Plaintiff Sick & Overtime, p.21
Exhibit 87

(1) Evaluation from August 2, 2004 to February 21, 2005 (seven months)

In (*Attachment M2*) I am submitting a file, which further breaks down the above summary and shows the detail record of my sick time and overtime, obtained from the actual pay stubs from August 1997 to February 2005, copies of which are also included. I wish to add the following comments in regard to the overtime, I put in under Michael's supervision:

1) In 2002-2003 a total of 176.25 overtime hours was entirely allocated to handling of the year-end financial statements to assure their timely processing. It was the first year that I had to handle them independently.

2) In 2003-2004 my overtime related to the year-end processing decreased to 101.5 hours thanks to my hands on experience from the previous year and knowledge retention. I was able to complete more tasks in much shorter time. I put in 5.25 overtime hours during the year for other projects.

3) In 2004-2005 my total overtime increased to 158.75 hours. I worked an additional 32.25 hours in the four weeks immediately preceding my November surgery and a total of 118.75 hours from December 27, 2004, the day I returned from disability until my

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
SDHR Rebuttal-Plaintiff Sick & Overtime, p.21
Exhibit 87

wrongful employment termination on February 21, 2005 in order to complete a multitude of additional tasks assigned to me by Michael, as well as other routine year-end statements. I put in 7.75 overtime hours during the year for other projects.

On February 19, 2005, the last Saturday before my dismissal on Monday morning, I worked alone until 8:00 PM in the evening to meet the deadlines for: the Other States Schedules F for Massachusetts and Colorado, and the US Department of Treasury Annual Schedule F.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.1

STATE OF NEW YORK
FIFTH JUDICIAL DISTRICT
SUPREME COURT COUNTY OF ONEIDA
* * * * * * * * * * * * * * * * * * *
GRAZYNA H. CHRISTMAN
Plaintiff
-vs- Case No. 6:06-cv-1392
UTICA NATIONAL INSURANCE GROUP, INC.,
Defendant
* * * * * * * * * * * * * * * * * * *

HELD AT: GETNICK LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP
258 Genesee Street
Utica, New York
November 8, 2007

EXAMINATION BEFORE THE TRIAL of MICHAEL S. EVOLO, taken by the Plaintiff, pursuant to Notice.

APPEARANCES:

STEFAN D. BERG, ESQ.
Attorney for Plaintiff
309 Arnold Avenue
Syracuse, New York 13210
GETNICK, LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.1,36

Attorneys for Defendant
258 Genesee Street
Utica, New York 13502
BY: JOSEPH.A DETRAGLIA, ESQ., of Counsel

(Discussion off the record.)
Q. Page three, at the top, you said that her "working relationships with her immediate work team have become strained"; am I correct?
A. That's what I wrote, yes.
Q. Tell me what you were saying with those words.
A. Well, I could just sense and see and feel that the working relationship between Grazyna, Josh and David -- and that's the definition of the immediate work team. There were others within the area we were working in – was strained. I could sense that the conversations were short and curt and to the point and had undertones within them. And on a number of occasions, I made Grazyna aware of those. As a

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.36-37

supervisor, I
14 was trying to train her or offer assistance on how to
15 recognize those particular situations and how to improve on
16 those. So I could just sense it. I could just see it. I could
17 smell it. I could feel it. It was just there. The
18 undertones were there, just in basically back-to-back
19 conversations with the three, I just knew it was there.
20 Q. Do you think this existed the prior year?
21 A. I didn't document it as such, so it wasn't obvious
22 to me as it was the following year.
23 Q. What do you think brought this change?
24 A. I have no idea.
25 Q. You also said that her behavior was disruptive to

37

1 the entire department. That's paragraph two. What was she
2 doing that was disruptive?
3 A. I believe in e-mails and in conversations , she
4 tended to more argumentative and tended to cut people off
5 midstream. If a particular person, for example

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.37

David was
having a conversation, rather than wait for him to finish his
thought and his explanation, she would jump in disruptively
and either disrupt his thinking, disrupt his thought or
whatever he was trying to get across to the group. That's
what I meant by "disruptive."
Q. Okay. And you added that internal and external
customers compressed concern about this to you?
A. Yes.
Q. Can you elaborate on what kind of concerns that were
expressed?
A. As a supervisor, I made phone calls to some of her
customers that she would have dealt with on a regular basis,
just to get some of their feedback. And during those phone
calls, I was told that there was concern in the way that
Grazyna was carrying on her conversation with those
individuals. As I've outlined in her performance

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.37-38

review,
those concerns were expressed with her abrupt tone and tenor
and her willingness to be flexible during those conversations.
Q. What do you mean "unwillingness to be flexible"?

38

A. I don't have details, per se, of those conversations. I don't recall what those where. But at the
time, probably what happened was there may have been a.
conversation with a particular reinsurer where there was
information being requested, either from us of them or them of
us. And quite honestly, she could've been asking for
information and the reinsurer may not have been able to get to
it right away, and based on her tone and tenor, they may have
construed that to be her unwillingness to be flexible on some
parameters they may be faced with. I don't recall exactly.
Q. On page five, there is a note about overtime, and my

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.38-39

recollection is that there were -- Grazyna has talked to me about one incident where there was overtime to be done and she wanted to do it in the afternoon, I guess after she complete her Bank of America work or Fleet work, and you insisted that she do it in the morning. Do you recall that?

A. I don't recall that specific incident.

Q. Was she willing to work overtime if required?

A. Yes.

(Plaintiff's Exhibit 3 was marked for Identification.)

I want to show you what we have marked for Identification as Exhibit 3. Do you recognize that document?

A. Yes.

Q. What is it?

39

A. It's an Employee Performance Review.

Q. Dated when?

A. It's stamp dated August 15th, 2003.

(Discussion off the record.)

Q. Is this a performance review of Accountant II?

A. I don't know. Clearly, obviously, it's blacked out.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.39,54

The names are all blacked out.
Q. I think there are two options, Accountant II or Senior Accountant?
Senior Accountant?
A. Correct. I can't tell which is which. I don't know.
(Discussion off the record.)
Q. Mr. Evolo, do you recognize what we have labeled as
Exhibit 3?
A. I do.
Q. Is this a performance evaluation that you performed?
A. Yes.
Q. And you recognize the individual for whom you did
this evaluation?
A. Yes.
Q. And this was an accountant that reported to you in
2003?
A. Yes.
Q. on page one, "Quality,' you said "There are number
of instances where accountant didn't take the time to

54

A. By all means, no.
Q. Do you recall a question concerning the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-6
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Evolo, Excerpts
Exhibit 55, p.54

attendance at J.P. Woods in New Jersey?
A. I do.
Q. And, in your – while you were working as the
Reinsurance Supervisor, were there functions that were related
to either reinsurance customers or clients or the like?
A. There were. We had many dinners, lunches, parties
that were hosted by the broker or specific reinsurers, and
Grazyna was invited to all of those and did not attend.
Q. And lastly, did your hire anyone to replace Ms.
Christman after her termination of employment?
A. Yes, I did.
Q. Who filled that position?
A. Margaret Krug filled that position.
Q. And did you know her gender at the time?
A. Yes, obviously, a woman.
Q. And at the time, did you know her age?
A. I know that she's over 50.
MR. DETRAGLIA: That's all. Thank you.
MR. BERG: Nothing further.
(Whereupon, the Examination concluded.)
-oOo-

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 12/04/02 Email
Exhibit 76

[Picture]
Josh.Watkins@UTICANATIONAL .COM
12/04/2002 03:51 PM
Date: Wednesday, 4 December 2002 3:51pm ET
To: Grazyna.Christman@UTICANATIONAL.COM
From: Josh.Watkins@UTICANATIONAL.COM
Subject: Clearing Account
Grazyna, I just wanted to apologize for the way I reacted towards you yesterday. It was stupid and uncalled for. I had no right to act in such a way, and for that – I am sorry. We are a small group, and if we cannot get along and work together. . . . .we will fail in our goals. Yesterday I let the team down, and if it was not for Jean – we would of failed. Once again, I apologize for my outburst. You are an incredibly dedicated worker, and in my book. . . . .doing a fantastic job. I have the utmost trust in you, which encourages me as we all make this transition into our new department. Please don't be discouraged because of me and my stupidity. I am looking forward to the future of our department, because I believe that the three of us will be able to handle everything responsibly. In this future, I will make every attempt to treat you with respect that a coworker should receive. If at any point, you feel that I am doing otherwise . . . . . please do not feel that you cannot talk to me about it. I give you permission to do so. I ask that you please accept my utmost apology.
Thanks, Josh

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p.1

Utica National Insurance Group
EMPLOYEE PERFORMANCE REVIEW
[Logo] Employee [Redacted] [Josh Watkins]
Office/Dept. U1 01 14 04
Job Title Accountant II Grade 11
Length of Time in Position 3 yrs.
Date of Review 7/27/04
Job Description: x Is Satisfactory □Needs Updating □Needs to be Re-Evaluated [stamp]Jul 28 2004 [handwritten] 416-11
Reason for Review: A – Annual Review
Directions: Place an "X" in the box which best describes the employee's level of performance in each category. Use the comments area to support the rating given. PERFORMANCE PLAN OF ACTION: State the agreed-upon performance improvement objectives: Each objective should include an action plan and time frame for completion.
REQUISITE PERFORMANCE FACTORS
Quality:
Give consideration to aspects such as:

- Accuracy
- Neatness
- Thoroughness
- Need for Checking

□ Work rarely requires correction or review. Work is consistently error-free, complete and thorough.
□ Work is generally error-free, complete and thorough, requiring minimal correction or review.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p.1

xMeets expectations for accuracy and thoroughness may require some supervisory review.
□ Sometimes produces work which is below expectations and standards for thoroughness or accuracy. Often requires supervisory review.
□ Makes excessive error requiring considerable correction and ongoing supervisory review.
Comments: [Redacted] work is typically neat and thorough. There have been occasions where [redacted] work contained errors that were a result of carelessness, e.g. the 60-90 day column of the Recoverable Report, the Ace American balance, the July recoverable report, Asbestos billing worksheet oversight, etc. These errors could have been prevented had [redacted] just taken the time to better understand his work. Producing a timely and accurate work product needs to remain a high priority for [redacted]. He must continue to ask himself whether his calculations "make sense" and he must give them a reasonability test for quality. [Redacted] continues to come to me with questions and I expect this to continue.
Productivity:
Give consideration to aspects such as:
- Quality
- Speed
- Deadlines
- Service

□ Consistently exceeds expectations for quality and

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p.1-2

quantity and timelines. Deadlines are always met and work is often ahead of schedule. Consistently demonstrates high commitment to service.

□ Often exceeds expectations for quantity and timelines. Deadlines are almost always met and work may be occasionally ahead of schedule. Usually demonstrates high commitment to service.

x Meets expectations for quantity and timelines. Deadlines are usually met. Demonstrates good commitment to service.

□ In some instances work is below expectations for quantity and timelines. Deadlines are occasionally missed. Sometimes fails to demonstrate commitment to service.

□ Does not meet minimum expectations for quantity and timelines. Deadlines are frequently missed. Fails to demonstrate commitment to service.

2-r-249 Ed. 1-03 1

Comments: [Redacted] and I meet on a regular basis to review and manage his priorities. This must continue in order to effectively manage the number of assignments he is given with short timelines. [Redacted] has been called on a number of times during the year to handle special projects and he has done a very good job. His desire to produce a [redacted] sometimes conflicts with his ability to be accurate so he needs to be sure he reviews his work for errors.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p. 2

[Redacted] has offered many contributions to the ProCede effort, e.g. working directly with the IT staff to resolve issues, has actively participated in ProCede discussions, has used the ProCede software to become familiar with it's [its] capabilities, etc. This type of involvement needs to continue.
Job Knowledge:
Give consideration to aspects such as:
- Comprehension
- Retention

□ Has comprehensive knowledge of the job. Consistently adds to job knowledge.
□ Has solid understanding of the job. Frequently adds to job knowledge.
x Understands the major aspects of the job. Retains learning. Occasionally adds to job knowledge.
□ Does not consistently demonstrate adequate knowledge of major aspects of the job. Repetition of mistakes in some areas results in retraining.
□ Does not demonstrate knowledge of basic job concepts. Continuously repeats mistakes.

Comments: [Redacted] continues to add to his Reinsurance knowledge through reinsurer meetings and various teleconferences with external customers. These types of forums afford him with greater exposure to various reinsurance issues.
[Redacted] needs to successfully complete his coursework for his 4 year degree and the Associate in reinsurance designation. Since his last performance

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p. 2

review he has earned 3 additional credit hours toward his degree. He must make this a priority and either complete his degree or ARe – one or the other. Interactions with JPWoods have afforded Josh a better understanding how our organizations work together. [Redacted] spent time with their Accounting and Claims departments and this experience has given [redacted] a better understanding of how their respective functions fit in with ours.

Working Relationships:

Give consideration to aspects such as:

- Cooperation
- Ability to work for/with others
- Flexibility

□ Consistently maintains harmonious working relationships with diverse group. Excellent acceptance by others. Consistently communicates well with others.

□ Often establishes harmonious relationships. Very good acceptance by others. Usually communicates well with others.

x Relationships are generally positive. Good acceptance by others. May communicate well with others

□ Has difficulty in consistently establishing or maintaining harmonious relationships. Has difficulty in communicating with others.

□ Poor working relationships requiring frequent

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p. 2, 4

supervisory intervention. Consistent difficulty in communicating with others.

Comments: [Redacted] continues to form good working relationships with both his external and internal customers.

There have been a few occasions during the year where I had to address his working relationship with a co-worker. He needs to continue to think through his actions and responses before delivering them to this person. He should evaluate how they will be perceived and adjust accordingly. I have told him that if he feels that he is being treated unfairly or there is hostility from this co-worker, he must see me before taking things into his own hands.

For the most part, [redacted] has been cooperative and flexible with the job assignments I have given him, I expect this to continue.

2

Communication Skills:

Give consideration to aspects such as:

- Interpersonal Skills
- Verbal/Written Skills
- Relevant Questions
- Effective Listening

□ Extremely effective in both verbal and written skills. Excellent interpersonal skills.

□ Very effective verbal and written skills. Very strong interpersonal skills.

x Effective verbal and written skills. Good

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p. 4

interpersonal skills.

□ Occasionally has difficulty communicating effectively. Some difficulty with interpersonal skills.

□ Poor communication skills. Frequent interpersonal difficulties.

Comments: [Redacted] verbal and written skills are good. He has improved his ability to be an active participant in meetings and I expect it to continue. (He has been very forthcoming with solutions for use with ProCede) His opinions are valued based on his experience and knowledge.

[Redacted] should continue to ratchet up his listening skills in order to ensure he understands what is expected of him.

[Redacted] has a tendency of not speaking up when outsiders are present. This is especially noticeable during some JPWoods' meetings. I expect him to sharpen his aggressiveness skills and offer his thoughts and opinions in these types of meetings.

There have been a few times during the year where [redacted] has demonstrated immature behavior, e.g. when being talked at, he turned his back to me to assume doing something else rather than giving me his full attention, or when asked to handle certain job tasks he has let his emotions get the best of him by openly exhibiting his frustration, ex. during a recent recoverable meeting, [redacted] became frustrated by the questions being asked by JPWoods

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p. 4, 6

and he made a comment that was going to leave the room if they continued. I expect [redacted] full attention at all times and that he show maturity when handling situations.
[Redacted] must keep me informed of all "hot topics". I would like to be kept current without having to always ask him.

4

PERFORMANCE PLAN ACTION: State the agreed-upon performance improvement objectives. Each objective should indicate an action plan and time frame for completion.

Factor Quality
Objective(s) To produce accurate and timely reinsurance accounting information. To maximize ProCede potential through efficiency of process, determination of management information, financials, etc. To enhance operational efficiencies in the payment of our reinsurance premium obligations and recovery of losses.
Plan of Action -Review your work carefully to minimize the number of errors – give it a reasonability test. –Quickly learn the potential of ProCede and exploit the possibilities.
Factor Productivity
Objective(s) To implement ProCede to enhance productivity. To effectively manage priorities.
Plan of Action -Gain overall understanding of ProCede and become adept in utilizing the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2004 review
Exhibit 22, p. 6

knowledge. –Assist in design of post-ProCede process to maximize potential while accomplishing our departmental objectives. –Use common sense, knowledge and experience to establish work priorities so that deadlines are met.

Factor	Job Knowledge
Objective(s)	To understand all aspects of your accounting job. To attain the highest degree of technical reinsurance/accounting expertise. To learn ProCede and use it effectively.
Plan of Action	-Successful completion of ARe series. Timeframe: Complete ARe 141 – December 2004 if not sooner. Completion of the ARe designation by December 2006. -Josh to assess Utica College course offerings in the fall of '04 and map a game plan to complete his 4 yr. degree. -Just don't "learn" the steps to complete your job – 'understand" them.
Factor	Working relationships
Objective(s)	[blank]
Plan of Action	[blank]

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test
Exhibit 75, p.1-2

[Stamp] RECEIVED May 29 2002 FINANCE DEPT

5/28/02 2479 Grazyna, Dan O'Connnell has requested for you to take the Harrison InnerView Questionnaire. Please complete & return to my attention. Thank you. Kathy Bean, Human Resources

Work Preference Questionnaire
Your Last Name: CHRISTMAN
PLEASE USE BLOCK CAPITALS
Your First Name: GRAZYNA
PLEASE USE BLOCK CAPITALS

1

[Logo] Harrison Inner View Profile Report
For Grazyna Christman
Entered on 06/03/2002
This report for Grazyna is a general description of traits relating to the workplace. To further determine suitability for a particular position, use the 'Job Suitability Graph'.
KEYWORD DESCRIPTIONS
Strongest Traits
Optimistic
Enthusiastic about goals
Self-accepting
Does not want to lead
Strong Traits
Dislikes making decisions

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test
Exhibit 75, p.2

Careful with risks
Wants recognition
Precise
Fairly Strong Traits
Non-intuitive
May lack frankness
Diplomatic
Helpful
Wants a stable career
Wants high pay
SUMMARY DESCRIPTIONS
Grazyna is extremely optimistic. However, she prefers a position which does not involve a great deal of analyzing problems and decisions. Grazyna is quite capable of being tactful. She may often have difficulty being frank and/or getting to the point. Grazyna may hesitate a great deal to express her real feelings. She can become very evasive. Grazyna is quite helpful and conscious of others' needs. However, she may have a great deal of trouble putting forward her needs. For Grazyna, doing work that benefits others/society is quite important. She is extremely self-accepting. However, Grazyna may overly focus on self justification rather than self-improvement. She is very precise.

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Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test
Exhibit 75, p.3

[Logo] Harrison Inner View Profile Report
Main Report For Grazyna Christman
Entered on 06/03/2002

OUTLOOK

Is neither overly self-certain nor lacking in confidence. Has a good balance between sticking to opinions and being open-minded. Is neither outgoing nor reserved, but balanced in between the two points. May be uncomfortable making presentations to groups. Is extremely optimistic.

DECISIONS

Prefers a position which does not require a significant amount of analytical problem solving. May have a strong tendency to not analyze the potential difficulties of plans and strategies. Prefers not to make decisions intuitively, but may occasionally use intuition to help make decisions. May feel uncomfortable assuming decision-making authority. Is fairly willing to collaborate with others with regard to making important decisions. Prefers to defer decisions to others.

INNOVATION

Perseveres with a task and is fairly good at the implementation stage of projects. Is fairly creative and progressive. May be very careful about taking risks. Likes to work at a steady pace and prefers not to have to do work which requires a rapid pace.

COMMUNICATION

May have difficulty being frank and/or getting to the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test
Exhibit 75, p.3-4

point. Is quite capable of being tactful. May often hesitate to express her real feelings and can be evasive. Is tolerant of people who are indirect or evasive. Is unconcerned about influencing others. Prefers to avoid occupying a position where the influencing of others is a significant aspect.
POWER
May have a great deal of difficulty putting forward her own needs. Strongly prefers to avoid undertaking a role which requires her to be assertive. Is quite helpful and conscious of other's needs. May want very little autonomy. May have difficulty handling autonomy in some situations. May hesitate to take initiative. Has a strong desire to work for a capable authority. Has high expectations of a supervisor and of others. Is very much a perfectionist

---

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3

[Logo] Harrison Inner View Profile Report
Main Report For Grazyna Christman
Entered on 06/03/2002
MOTIVATION
Prefers moderately challenging work. Is extremely clear about her goals and is strongly motivated toward them. Is generally at ease and relaxed while working with only some tension. Is able to deal with stress moderately well. Is quite motivated by money,

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test
Exhibit 75, p.4

but not excessively so. Has benevolent intentions. Undertaking work which benefits others/society is quite important to her. Tends to follow through on her benevolent actions. Wants to benefit herself as well as others. This may sometimes cause conflict between her own desires and the desire to benefit others. Has a quite strong desire to have a stable career.

SUPPORT

Is fairly empathetic and warm. Is extremely self-accepting. Has moderate interest in self-improvement. May focus excessively on self-justification rather than on self-improvement. May want recognition very much.

ORGANIZATION

Is moderately well organized. Is fairly flexible and adaptable to changes. Is very precise. Is moderately systematic. Is fairly willing to follow closely defined procedures and schedules.

LEADERSHIP

Lacks interest in assuming a leadership position. Does not have interest in planning. Prefers not to have to spend too much time in a planning role. Prefers not to have to enforce rules and may be overly empathetic when firmness is needed.

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Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test
Exhibit 75, p.5

[Logo] Harrison Inner View Profile Report
How To Manage Report For Grazyna Christman
Entered on 06/03/02

This section of the report is designed to assist Grazyna's manager to work with her in order to create a mutually beneficial relationship. Adjusting management style wherever appropriate to accommodate individual traits and preferences will offer job satisfaction to Grazyna and higher productivity to the company. The general approach of this section is to explore ways to benefit from Grazyna's strengths, to neutralize weaknesses, and to accommodate her individual needs within the context of the particular employment situation. In order to obtain the best results from this report, jointly look for ways to apply these general ideas. The suggestions in this section must be applied in the context of sound management practices, good interpersonal shills and according to the specific employment circumstances.

COMMUNICATION

Provide the support and encouragement necessary to help her to express her real views as she may tend to be evasive or indirect. Be diplomatic in order to deal effectively with her.

POWER

Encourage her to state what she wants and needs and discuss regularly.

MOTIVATION

Try to align her professional goals with the goals of

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Harrison InnerView Test
Exhibit 75, p.5

the organization. Give help to structure her position so that she can feel that she is doing work that benefits others, otherwise, she may have difficulties due to experiencing a need for greater meaning or sense of purpose.

SUPPORT

Give regular specific and sincere recognition as she is very motivated by being given recognition.

ORGANIZATION

Consider how to utilize her natural ability to be precise.

LEADERSHIP

She may be very uncomfortable in a leadership position and thus be less effective. She may have difficulty with interpersonal relationships that would interfere with effective leadership. Consider adjusting duties if the person requires enforcing rules.

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Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 2003 Merit
Exhibit 71

From: Brian Lytwynec [Handwritten: Rick's Boss]
To: Rick Beidleman
Cc: Anthony.Paolozzi, Cheryl.DeAngelo,
Daniel.O'Connell, Doug.Robinson,
Grazyna.Christman, Michael.Evolo, Rob.Sherman,
Steve.Barry, Steve.Lorenz
Sent: Friday, 14 February 2003 8:05am ET
Subject: RE: HSB Contingent Commission

Rick, thanks to you and, particularly, Grazyna. It's good news and we sure appreciate it. Brian

< - - - - - - - - - - Forwarded letter follows - - - - - - - - - >
Date: Monday, 10 February 2003 4:33pm ET
To: Rob Sherman
Cc: Brian.Lytwynec, Michael.Evolo, Steve Lorenz,
Anthony.Paolozzi, Cheryl.DeAngelo,
Daniel.O'Connell, Grazyna.Christman, Steve.Barry
From: Rick.Beidleman
Subject: HSB Contingent Commission
Rob –
At long we have finally come to agreement with HSB on the contingent payment for the years '98 thru '02.

Due in very large part to the initiative and perseverance of Grazyna Christman we have developed numbers and agreed with HSB on a contingent payment to us in the amount of 330,500.00. This compares, I am told, to some

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 2003 Merit
Exhibit 71

$85,000 we have accrued for the payment. This outcome is the result of a lot of hard work by Grazyna as well as good interactions with the folks at HSB. And, it clears up contingent calculations that go back as far as the 7/1/98 – 12/31/99 profit contingent period.
We are told that the check is being cut and will be available next week when HSB visits. I don/t anticipate any change, but it won't be in the bank until next week.
Obviously, the fact that we earned a contingent commission reflects very positively on all work being done by the folks who put the business on the books.
Thank you.
Rick

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/18/05 Email
Exhibit 78, p.1

[Picture]
shaunastar.m.douglass@us.pwc.com
02/18/2005 09:35 AM
To: Grazyna.Christman@notes.uticanational,com
cc:
bcc:
Subject: Re: 2180202 Balances Payable
History: This message has been replied to.

This is awesome! I will be working with Dave and Josh this morning (hopefully) and then I will review your spreadsheets over the weekend and start working with you on some of the reconciliation testing we did last year (i.e, where we tied out the premium system, etc.)
Thanks again – these are really great . . . were you ever an auditor?!

Grazyna Christman@uticanational.com
02/18/2005 08:38 AM
To: Shaunastar M
Douglass/US/ABAS/PWC@Americas-US
cc:
Subject: 2180202 Balances Payable

Good morning Shauna,
Good to hear from you again, hope you had a good year.
I had put together the information in the form of

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 02/18/05 Email
Exhibit 78, p.1

Excel files to show payment of balances, which you questioned in the e-mail sent to Mike. Some were straight forward, other – a part of larger payments. Please see the attached files and let me know, if sufficient:
I will be happy to answer questions/provide additional information.
Thank you.

Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 01/22/05, 01/19/05 & 08/05/04 Emails
Exhibit 79, p.1

[Picture] Grazyna Christman/UNIG
01/22/2005 11:02 AM
To Bob Dicks/UNIG@UNIG
cc:
bcc:
Subject: Re: Tsunami Disaster Relief

Good morning Mr. Dicks,
I am happy I was able to help and thank you for matching my contribution.

Grazyna H. Christman
Reinsurance Accounting
Utica national Insurance Group
P.O.Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone:800/274-1914 ext.2214 or 315/734-2214
Fax: 315/734-2662
Bob Dicks/UNIG
[Picture] Bob Dicks/UNIG
01/22/2005 10:23 AM
To Diane Rice/UNIG@UNIG
cc:
Subject: Tsunami Disaster Relief
Just a note to let you know I received your check. On behalf of Foundation, our Company, the American Red Cross and all of the victims your contribution will help.....THANK YOU!

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 01/22/05, 01/19/05 & 08/05/04 Emails
Exhibit 79, p.1-2

Bob
Robert W. Dicks, Jr.
VP General Auditor
Utica National Insurance Group
P.O.Box 530
Utica, NY 13503
Email: bob.dicks@uticanational.com
Phone: (315) 734-2368
Fax..... (315) 734-2662

1

[Picture] Grazyna Christman/UNIG
01/19/2005 10:54 AM
To EDCHIN@ajg.com
cc:
bcc:
Subject: Harden Managers XOL

Good morning Ed,
Happy New year and hope that all is well with you. We need your assistance with balance, which we are carrying as due to Utica for harden Managers XOL (our number F0430). The amount is $7,243.58 and is part of my account reconciliations; however, I had not handled this Treaty myself. Would you please advise what balances, if any are shown on JPW books?
Thank you for your help and best regards,

Grazyna H. Christman
Reinsurance Accounting

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 01/22/05, 01/19/05 & 08/05/04 Emails
Exhibit 79, p.2-3

Utica national Insurance Group
P.O.Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone:800/274-1914 ext.2214 or 315/734-2214
Fax: 315/734-2662

2

[Picture] Grazyna Christman/UNIG
08/05/2004 02:55 PM
To: Thompson Pat-
Princeton<PThompson@amre.com>
cc: Cheryl Deangelo@uticanational.com,
Grazyna.Christman@notes.uticanational.com,
Lee.Young@uticanational.com
bcc:
Subject: Re: Fw: Metroplex Garden, Morelos Project,
Nogales Produce THIRD REQUEST
Hi Pat,

I am confirming that Metroplex reinsurance premium had been keyed by Michele on 7/31/04. The amount of $11,850.00 will interface into accounting system over this weekend (premiums are always processed on 6th business day). So will the premium codings for Morelos and Nogales policies, even though Michele had keyed them earlier in July (please refer to my earlier e-mail dated 07/31/04).

Pat, we certainly appreciate your patience and

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 01/22/05, 01/19/05 & 08/05/04 Emails
Exhibit 79, p.3

apologize for any inconvenience this delay could have caused. I will be off tomorrow, so should you have any questions, please do not hesitate to call me on Monday.
Thank you and best regards,

Grazyna H. Christman
Reinsurance Accounting
Utica national Insurance Group
P.O.Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone:800/274-1914 ext.2214 or 315/734-2214
Fax: 315/734-2662

Thompson Pat-PrincetonPThompson@amre.com
08/05/2004 10:13 AM
To: Grazyna.Christman@notes.uticanational.com, Cheryl deangelo@uticanational.com, Lee.Young@uticanational.com
cc:
Subject: Re: Fw: Metroplex Garden, Morelos Project, Nogales Produce THIRD REQUEST

Good Morning Cheryl, Grazyna & Lee,
Can anyone tell me if the Metroplex premium has been done and is now ready for

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 09/18/03 &04/23/02 Emails
Exhibit 80, p.1

[Picture]gmetzge@gcr.com
09/18/2003 10:16 AM
To Grazyna.Christman@UTICANATIONAL.COM
cc:
bcc:
Subject: Re: Accounting contact-premium p
Date: Thu, 18 Sep 2003 10:16:27 -0400
To Grazyna.Christman@UTICANATIONAL.COM
From: gmetzge@gcr.com
Subject: Re: Accounting contact-premium problems with facultative School risk
Grazyna,

Thank you very much for your quick response and help with this matter-very much appreciated!
If there's ever anything you need on our end, please do not hesitate to contact me.
I'm not sure if you know, but I work with Cheryl Daniels on the Schools/Printers/Condos (condos now being extinct) programs-prepare the certificates which we mail to you. Any questions on these matters, let me know.
Thanks again!
Regards,
Gian
Gian Metzger
GeneralCologne Re
(860) 520-7678 (phone)
(860) 520-7718 (fax)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 09/18/03 & 04/23/02 Emails
Exhibit 80, p.1-2

Buy Fac Online @http://facworld.com
Grazyna.Christman@uticanational.com
09/18/2003 10:08 AM
To: gmetzge@gcr.com
cc:
Subject: Re: Accounting contact-premium problems with facultative School risk
Gian,

As per our conversation I am confirming that Utica has the following amounts coded for Churchville-Chili Central (CPP 1357621): $3,414 for PY2002 and $14,250 – PY2003. This policy has not been listed on

1

Gen Re recent statement, I presume that it should show next month at which point Utica will pay the premium.
I am glad we have it resolved. Please do not hesitate to call should you have any questions.
Regards,
Grazyna H. Christman
Reinsurance Accounting
Tel: (315) 734-2214
Fax: (315)734-2662 Email:
E-mail:grazyna.christman@uticanational.com
- - - - - - - (Forwarded letter 1 follows) - - - - - - -
Date: Thu, 18 Sep 2003 09:45:09 -0400
To grazyna.christman
From: gmetzge@gcr.com

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 09/18/03 & 04/23/02 Emails
Exhibit 80, p.2

Subject: Re:Accounting contact-premium problems with facultative School risk
Hi Grazyna,
I need some help. I'm looking to contact someone in your Accounting department to correct the premium on a school risk, which was endorsed mid-term. The Reinsurance confirmation sheet received from Utica had the wrong additional premium, and emails have gone back and forth between our UW UW's there (John Acee and Charles DeCosty).
Whom should I contact regarding these issues? This is a long outstanding item which we'd like to get resolved. Here are the details:
Churchville-Chili Central School District, your policy CPP 1357621. Our certificate for the expiring year 7/1/02-03 is AFF-M501424, which was endorsed mid-term (11/19/02) for the additional premium of $3414. that amendment came with the wrong additional premium.
We are also looking for the 7/01/03-04 renewal confirmation notice on this school, an annual premium of $14,250.
Hope you can help us with this item, or point me in the right direction. My old Accounting contacts were Rosemary Wadas, Kristin Wilson- but an unsure what division they're working in now.
Thank Grazyna!
Regards,

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 09/18/03 & 04/23/02 Emails
Exhibit 80, p.2-3

Gian
Gian Metzger
GeneralCologne Re
(860) 520-7678 (phone)
(860) 520-7718 (fax)
Buy Fac Online @http://facworld.com
2
From: Grazyna.Christman
To: Cheryl.DeAngelo
Sent: Tuesday, 23 April 2002 1:10pm ET
Subject: RE: Reinsurance acctg corrections
Hi Cheryl

I gladly do that. Please let me know if there is anything else that I could do to make communication easier.
Have a nice day!
Grazyna
==========
Grazyna.Christman@UticaNational.com
Phone: (315) 734-2214
Fax: (315) 734-2994
<- - - - -Forwarded letter follows- - - - >
Date: Tuesday, 23 April 2002 12:56pm ET
To: Grazyna.Christman
From: Cheryl.DeAngleo
Subject: Reinsurance acctg corrections
Hi Grazyna
See you've been busy trying to get some of the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 09/18/03 & 04/23/02 Emails
Exhibit 80, p.3

reinsurance corrected. I have been sending copies to the Und. Mgrs to ask them to also followup.
Could you please CC: the Underwriting Managers on the future reinsurance emails. This will help cut down the time lag with me sending them the followup email. Hopefully with all the parties CC'd we'll get to the root of any problems to cut down on these in the future. Thanks.
They are: ERO/SPECRO: John Griffin & Frank Zurschmit
NERO: Tony Sychtysz
RFI: Williams Miller
MARO: Mat Lupino
SERO: Jim Reilly
SWRP: Benton Hall

Cheryl

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Discipline
Exhibit 74, p.1

From: Michael Evolo
To: Nina Owens
Cc: Rick Beidleman
Sent: Thursday, 15 January 2004 9:54 am ET
Subject: [Redacted]
Nina,

During [redacted] performance review on August 7th, I discussed with him how his "lack of accuracy and the mishandling of certain calculations compromised the integrity of our financial statements. I also discussed with him my expectation that his calculations balance back to the General Ledger and that he think through his actions when completing his assigned tasks. As a follow up to his performance review [redacted] and I met to discuss his work performance since his last review and I reported to him that I am satisfied with his progress. I will continue to closely monitor his work performance and provide him with the necessary feedback from which he can gauge his progress.

Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
Phone – 800.274.1914 Ext. 2544
E-Mail – Michael.evolo@uticanational.com
Fax – 315.734.2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Discipline
Exhibit 74, p.2

Utica National Insurance Group [Logo] Insurance that starts with you
To: [Redacted]
Office, Dept. Reinsurance
Date: May 17, 2005
From: Michael Evolo
Office, Dept. Reinsurance
Subject: Written Warning
Cc: Dane Austin

This is a follow up to our meeting on Friday, May 13th, and is considered a formal "written warning" regarding the incident that took place during the week of math 9th. A discussed, you produced an exhibit that was forwarded to Holborn Intermediaries that contained inaccurate information. Specifically, you overstated our catastrophe losses for 1992 by $41M dollars. As we discussed, the Reinsurance Department's most important competency is producing accurate accounting information. As such, each Reinsurance Accountant is responsible for producing accurate results.
In reviewing this particular situation, it is clear that you did not review your exhibit for accuracy or reasonability, both of which should be a customary practice. While I certainly understand the challenge of compiling the data, there is no excuse for not checking your work. Should there be another incident

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Discipline
Exhibit 74, p.2-3

involving inaccurate information within the next 12 months, further disciplinary action may result.

[Redacted] you must give serious consideration to dedicating additional effort in reviewing your work product to ensure its accuracy. Further to our conversation regarding the work time, it is also important to remember that as an exempt professional, you are expected to work the required number of hours necessary to accomplish the work. Please let me know if you have any questions

s/
[Redacted]

2

[Logo] Utica National Insurance Group
Your Employee Handbook
Section: Discipline
Levels of Discipline

Discipline is administered in accordance with the level of the offense. While the Company's disciplinary procedure is progressive in nature, not all steps are followed in all cases. Levels of discipline include:

1. Verbal Warning
2. Written Warning
3. Disciplinary Probation
4. Temporary lay-off without pay
5. Demotion
6. Termination

• Disciplinary Offenses

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Discipline
Exhibit 74, p.3

Below is a list of actions and/or behaviors which are considered to be unacceptable conduct or unsatisfactory performance. These offenses would generally require the supervisor/manager to follow the outlined progressive disciplinary steps; such offenses include but are not limited to the following:

✓ Tardiness
✓ Poor work performance
✓ Excessive absenteeism
✓ Violation of Company traffic or parking rules
✓ Use of profane or abusive language
✓ Horseplay or pranks

Below is a list of actions and-or behaviors that so interfere with the work of other employees and conduct of the Company's business that progressive discipline may not be followed. These offenses may subject an employee to discipline up to and including immediate discharge; such actions or behaviors include but are not limited to the following:

✓ Unauthorized possession, or destruction of Company property or another employee's property
✓ Unauthorized possession of firearms or weapons of any kind on Company property
✓ Gambling on Company premises
✓ Insubordination or willful disregard of an order or willful neglect of duty
✓ Falsification of any Company records
✓ Date" 03/01 Page 1

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2003 Review
Exhibit 23, p.1

Utica National Insurance Group
EMPLOYEE PERFORMANCE REVIEW
[Logo] Employee [Redacted] Office/Dept. U1 01 14 04
Job Title Accountant II Grade 11
Length of Time in Position 2 yrs.
Date of Review [blank]
Job Description: x Is Satisfactory ☐Needs Updating ☐Needs to be Re-Evaluated [stamp] Aug 15 2003 [handwritten] 416-11
Reason for Review: A – Annual Review
Directions: Place an "X" in the box which best describes the employee's level of performance in each category. Use the comments area to support the rating given. PERFORMANCE PLAN OF ACTION: State the agreed-upon performance improvement objectives: Each objective should include an action plan and time frame for completion.
REQUISITE PERFORMANCE FACTORS
Quality:
Give consideration to aspects such as:

- Accuracy
- Neatness
- Thoroughness
- Need for Checking

☐ Work rarely requires correction or review. Work is consistently error-free, complete and thorough.
☐ Work is generally error-free, complete and thorough, requiring minimal correction or review.
☐ Meets expectations for accuracy and thoroughness;

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2003 Review
Exhibit 23, p.1

may require some supervisory review.
x Sometimes produces work which is below expectations and standards for thoroughness or accuracy. Often requires supervisory review.
□ Makes excessive error requiring considerable correction and ongoing supervisory review.
Comments: Producing timely and accurate work must be a priority. There have been a number or instances where [redacted] didn't take time to reconcile or verify his work before submitting it. (Asbestos billings to JPWoods, AAD Summary, E & O Settlement billing, Gen Re Profit Sharing calculation and the AMRECO journal entry error). These have all proven to be costly errors. [Redacted] has the knowledge and the understanding to produce quality results, however, he must take the time to verify his work by reconciling it back to the General Ledger, ask himself "does this make sense" and/or ask his supervisor if he doesn't understand a particular calculation. It is crucial that [redacted] understands how his work-product effects the financials and the ramifications of being incorrect.
Productivity:
Give consideration to aspects such as:
- Quality
- Speed
- Deadlines
- Service

□ Consistently exceeds expectations for quantity and

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2003 Review
Exhibit 23, p.1,6

timelines. Deadlines are always met and work is often ahead of schedule. Consistently demonstrates high commitment to service.

□ Often exceeds expectations for quantity and timelines. Deadlines are almost always met and work may be occasionally ahead of schedule. Usually demonstrates high commitment to service.

x Meets expectations for quantity and timelines. Deadlines are usually met. Demonstrates good commitment to service.

□ In some instances work is below expectations for quantity and timelines. Deadlines are occasionally missed. Sometimes fails to demonstrate commitment to service.

□ Does not meet minimum expectations for quantity and timelines. Deadlines are frequently missed. Fails to demonstrate commitment to service.

2-r-249 Ed. 1-03 1

PERFORMANCE PLAN ACTION: State the agreed-up performance improvement objectives. Each objective should indicate an action plan and time frame for completion.

Factor Quality

Objective(s) To produce accurate and timely reinsurance accounting information. To maximize ProCede potential through efficiency of process, determination of management information,

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2003 Review
Exhibit 23, p.6,9

financials, etc. To enhance operational efficiencies in thepayment of our reinsurance premium obligations and recovery of losses.

Plan of Action -Take time to step back and assess your work – is it correct? Does it make business and practical sense? -All accounting work needs to reconcile back to the general ledger! -Learn the potentials of ProCede and exploit the possibilities. -Be aggressive in the learning of the ProCede system –constantly ask "why?"

Factor Productivity

Objective(s) [blank]

Plan of Action [blank]

Factor Job Knowledge

Objective(s) To attain the highest degree of technical expertise.

Plan of Action -Continue successful completion of undergraduate studies to complete your degree in Accounting. -Successful completion of ARe series. -Completion of company sponsored PC classes – Crystal training. Timeframe: August 2003. –Close interaction with Supervisor in order to understand the 'big picture" –Actively participate in reinsurer and broker meetings in order to gain a better understanding of the reinsurance market.

6

Formal Report/Presentations [Blank]

ADDITIONAL COMMENTS:

[Redacted] is a conscientious, hard working employee

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Accountant II – 2003 Review
Exhibit 23, p.9

who wants to do the right thing. Some of the missteps that have occurred should be considered learning experiences, however, [redacted] should understand that his credibility has been strained and he must work to rebuild his reputation. Accurate reinsurance accounting is vital and [redacted] needs to realize his work is extremely important to the integrity of our financial statements. I am committed to providing [redacted] with the necessary tools and direction needed to accomplish his responsibilities in a timely and accurate manner. It is important that whenever [redacted] does not understand a reinsurance issue, he have the fortitude and maturity to ask me for help. I look forward to working with [redacted] over the next year to accomplish his personal goals and the goals of the reinsurance department. [Redacted] and I have discussed the need for improvement in the quality of his work (error free) and he fully understands that if the quality of his work does not sufficiently improve within 90 days of his review further disciplinary action will result.

Employee Comments: [blank]

Employee's Acknowledgement

This is to acknowledge that my supervisor review my job progress with me on 8/7/03 (date). My signature indicates that I understand the contents of this review. It does not necessarily indicate that I agree with its contents. Employee [s/ redacted]

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35, p.1

STATE OF NEW YORK
FIFTH JUDICIAL DISTRICT
SUPREME COURT COUNTY OF ONEIDA
* * * * * * * * * * * * * * * * * *
GRAZYNA H. CHRISTMAN
Plaintiff
-vs- Case No. 6:06-cv-1392
UTICA NATIONAL INSURANCE GROUP, INC.,
Defendant
* * * * * * * * * * * * * * * * * *

HELD AT: GETNICK LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP
258 Genesee Street
Utica, New York
November 8, 2007

EXAMINATION BEFORE THE TRIAL of DANE AUSTIN, taken by the Plaintiff, pursuant to Notice.

APPEARANCES:

STEFAN D. BERG, ESQ.
Attorney for Plaintiff
309 Arnold Avenue
Syracuse, New York 13210
GETNICK, LIVINGSTON, ATKINSON, GIGLIOTTI & PRIORE, LLP

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35, p.1,11

22 Attorneys for Defendant
258 Genesee Street
23 Utica, New York 13502
BY: JOSEPH.A DETRAGLIA, ESQ., of Counsel
24
25 11

1 proceed?
2 A. I don't remember specifically how to proceed, other
3 than to keep me informed as the month went on. The outcome of
4 the early January meeting was that over the next thirty days
5 would be critical to Grazyna's continued employment there and
6 that she had to dramatically improve on her working
7 relationships and on accuracy of her work, accuracy and
8 timelines.
9 Q. Subsequent to the January meeting, did you have
10 further discussions with Mr. Evolo about Ms. Christman?
11 A. Certainly.
12 Q. And do you recall the general substance of those
13 meetings?
14 A. Regarding?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35, p.11,14

15 Q. Ms. Christman
16 A. In general, yes. As errors would pop up, we would
17 discuss those errors and problems, and working relationship
18 issues. It was clear to me that progress was not being made
20 Q. Did there come a time in January of '05 when you
21 suggested to Mr. Evolo that she should be terminated?
22 A. I don't recall that. In January of '05, we had
23 agreed to give Grazyna thirty days to take a serious run at
24 this, to try to get back on track.
25 Q. Do you recall which of you made the first statement

14

1 Q. Sir, I would like to ask you about another employee in
2 the department who, at that time in '04, was an Accountant II.
3 Are you familiar with that employee?
4 A. Yes.
5 Q. During this time frame – obviously, we are only
6 discussing the time frame of about November '04 until.
7 January/February '05 while you were the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35, p.14-15

Director, while Ms.
8 Christman was employed there – did Mr. Evolo raise with you
9 issues about accuracy of the work of the Accountant II?
10 A. Issues or issue? There was an accuracy problem, but
11 not a tom of problems, not a ton of errors. Not a large
12 number of errors.
13 Q. How did you, in your mind distinguish between the accuracy
14 problems of Ms. Christman and the accuracy problems
15 of Accountant II?
16 A. I can't remember specifically how I remembered them.
17 In general, I can remember them as Ms. Christma[illegible] numerous
18 errors and [illegible]e Accountant II did not have numerous errors.
19 Q. Issue was also raised regarding working
20 relationships of Ms. Christman and of Accountant II. Were the
21 working relationship issues of Accountant II raised with you,
22 also?
23 A. I don't recall issues of working relationship with

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35, p.15-16

24 Accountant II.
25 Q. Okay. When you were considering terminating Ms.

15

1 Christman's employment, did you compare her performance with
2 that of the other two employees in the department?
3 A. Yes, I' sure I did.
4 Q. And how did you rate them?
5 A. How did I rate them?
6 Q. When you prepared the three, what conclusions did
7 you draw?
8 A. Between the three?
9 Q. Yes.
10 A. I'm not sure I follow your line of thinking on that.
11 Q. You did compare in your mind the performance of
12 Grazyna and the two other employees?
13 A. I'm sure I did.
14 Q. How did you distinguish Ms. Christman's performance
15 and the performance of the other two employees?
16 A. I can't recall specifically exactly how I thought.
17 Q. Do you recall, in general, what you were thinking?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35, p.16

18 A. Yes.
19 Q. And what was that, sir?
20 A. That. Ms. Christman's inaccuracy – errors, I should
21 call them – errors and working relationships issues far beyond
22 what could be tolerated in an accounting position,
compared to
23 what we had with the other accountants.
24 Q. The errors of the other accountants were not as
25 numerous as those of Ms. Christman?

16

1 A. Nowhere near.
2 Q. And what about the impact on the work product of
3 Utica National, the impact of the errors on the Utica National
4 work product?
5 A. In that sixty-day time period? I don't recall any
6 errors of the Accountant II in that sixty-day time period. If
7 I 'm trying to get to the impact of Mr. Christman's errors on
8 Utica National –
9 Q. Yes.
10 A. - - it's a two-pronged problem. One is that

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Deposition Transcript Austin, Excerpts
Exhibit 35, p.16

outside
11 - - errors that went out to outside entities, if you will, created
12 problems for us in terms of our credibility with reinsurers.
13 Credibility with reinsurers parlays into their risk tolerance
14 or their risk appetite with a carrier. So if errors are
15 produced to outsiders, you become a less desirable ceding
16 company to those reinsurers, which, in a shrinking world of
17 the number of reinsurers, that's a problem. Reputation is
18 everything for our company. From an internal management
19 standpoint, errors can lead to wrong decisions, wrong
20 directions, wrong strategy. Accounting is precise and has to
21 be accurate.
22 MR. BERG: Thank you, I don't think I've got
23 any other questions.
24 (A brief recess was taken.)
25 (Whereupon, the Examination concluded.)

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/11/05 Email
Exhibit 42

Michael Evolo/UNIG
02/14/2005 12:47 PM
To: Grazyna Christman/UNIG@UNIG
cc: Dane Austin/UNIG@UNIG
bcc: Nina Owens/UNIG@UNIG
Subject: Re: January Meeting
Grazyna,

Let's plan on meeting later this week. I'll let you know the particulars.

Thanks –
Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662
Grazyna Christman/UNIG
[Picture]
Grazyna Christman/UNIG
02/11/2005 04:49 PM
To: Michael Evolo/UNIG@UNIG
cc: Dane Austin/UNIG@UNIG
Subject: Re: January Meeting
Mike,

Could you please tell me when we will meet to do a "30 days follow up" to our 01/06/05 meeting?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Plaintiff 02/11/05 Email
Exhibit 42

Thank you.
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 09/20/04 Email
Exhibit 33, p.1

Rick Biedleman/UNIG
09/20/2004 10:15 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Re: Fw: 2004 Performance Review
History: This message has been replied.
Grazyna,

Yes I have.
I apologize for the delay in responding.
We'll get together shortly.

Rick
Grazyna Christman/UNIG
[Picture]
Grazyna Christman/UNIG
09/15/2004 02:28 PM
To: Rick Biedleman/UNIG@UNIG
cc:
Subject: Fw: 2004 Performance Review
Good afternoon Rick,

I was wondering, if you had a chance - as per our conversation back in August – to go over my comments added to the annual performance review.
Thank you,
Grazyna H. Christman

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 09/20/04 Email
Exhibit 33, p.1-2

Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662
***** Forwarded by Grazyna Christman/UNIG on 09/15/2004 02:19 PM *****
[Picture]
Grazyna Christman/UNIG
08/11/2004 11:12 AM
To: Rick Biedleman/UNIG@UNIG
cc:
Subject: Re: Fw: 2004 Performance Review

1

Rick,
I would like to say thank you for giving me an opportunity this morning to express my views and concerns related to the reviews (both nine months and annual) prepared by Mike and your offer to go over 59 pages of my response, which I added on July 26, 2004.
I really appreciate it and will await your reply.
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 09/20/04 Email
Exhibit 33, p.2

Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662
Rick Beidelman/UNIG
08/10/2004 12:18 PM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Re: Fw: 2004 Performance Review
Grazyna –

How about first thing (7:00) tomorrow morning? That work for you?
Rick
Grazyna Christman/UNIG
[Picture]
Grazyna Christman/UNIG
08/10/2004 11:42 AM
To: Rick Biedleman/UNIG@UNIG
cc:
Subject: Fw: 2004 Performance Review
Hi Rick,

May I ask for a few moments of your time to discuss briefly my performance review prepared by Mike? I wish to escalate this issue to a higher level, but would not like to do that without taking to you first. I fully understand that your schedule is very busy and involves travel in the near future and I certainly

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 09/20/04 Email
Exhibit 33, p.2-3

would not like to interfere with it. Could you please let me know what time would be convenient for you?

2

Thank you!
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662
***** Forwarded by Grazyna Christman/UNIG on 08/10/2004 11:17 AM *****
[Picture]
Grazyna Christman/UNIG
08/11/2004 11:15 AM
To: Michael Evolo/UNIG@UNIG
cc:
Subject: Re: 2004 Performance Review

Thank you Mike, I appreciate it!

Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 09/20/04 Email
Exhibit 33, p. 3

Phone: 800/274-274-1914, ext 2214 or 315/734-2214
Fax: 315/734-2662
Michael Evolo/UNIG
Michael Evolo/UNIG
08/10/2004 11:11 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: 2004 Performance Review
Grazyna,

I have discussed with Rick and Nina your desire to advance your opinions to a higher level. At this point, it will be up to you to schedule time with them.

Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Reply 2004 Review, pp.1-2,59
Exhibit 31, p.1

ADDITIONAL COMMENTS
Grazyna must give serious attention to improving her performance and her ability to work with others. I have outlined a number of instances where she has fallen short in both of this areas and my expectation is that she will make them both priorities in the coming year. Her delivery in conversations is perceived as abrasive and confrontational so she must be willing to make an adjustment in the way she interacts with others in order to gain their respect. She must also be willing to recognize my attempts to provide her with feedback as a means of helping her and not show resistance or deny the facts – she needs to be cooperative. I expect that she will be mature enough to receive this critical feedback and use it to better understand what needs to be adjusted,
Grazyna has exhibited some technical skills with the use of the computer and she should work this to her advantage. She must take this strength and broaden its application in an effort to increase our efficiencies. She must bring forth ideas that will improve our effectiveness, especially during the cross-over to ProCede.
I expect that Grazyna will complete the following in order to improve her performance:
- ARe designation
- Improve her working relationships with both internal and external customers. (to be reviewed

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Reply 2004Review, pp. 1-2,59
Exhibit 31, p. 1

periodically by supervisor)
- Be cooperative with everyone she has contact with.
- Contribute willingly and productively to ProCede and other departmental objectives.
- Use her knowledge and expertise to develop an overall understanding of department's job's objectives, implement appropriate priorities where discretionary, and meet deadlines imposed.

Employee Comments:
I would like to thank my supervisor, Mike Evolo for his time to do my annual performance review. For the record I wish to include my reply to a 9-months work performance prepared by Mike and discussed on 5/11/04. I had been quite disturbed by that evaluation and Mike's commentary to my response, and even more by the annual review and no salary increase. (cont. Page 2)

Employee's Acknowledgement
This is to acknowledge that my supervisor reviewed my job progress with me on 7/22/04 (date). My signature indicates that I understand the contents of this review. It does not necessarily indicate that I agree with its contents.
Employee *Please see the attached*
Supervisor s/ Michael S. Evolo
Manager s/ R. Beidleman 7/22/04

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
2004 Review, pp. 1-2,59
Exhibit 31, p. 2, 59

Page 2 of 59
The review had not reflected my performance through the whole year. The negative comments seemed to have been chosen selectively, and positive ones – omitted. The comments had been incomplete and/or inaccurate.
I consider myself a hard working, dedicated, intelligent and well educated employee, who has a good understanding of her job responsibilities. I feel that there have been situations within Reinsurance Unit, which did not seem right. Like unevenly distributed workload; my co-workers excessive and not business related activities during work hours; co-workers not assuming ownership of their errors; lack of guidance and advising from higher graded co-workers (Accountants: II and Senior) of less experienced staff members; promotion merits.
I had questioned/brought these to Mike's attention during past year. I would like to put comments to various Performance Factors right on the copies of supporting documentation:
Please see the following pages.
[Pages 3-58 omitted]

Page 59 of 59
This concludes my comments.
Thank you for your time to review.
s/ Grazyna Christman 07/26/04

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendants JPWoods Managers Meeting
Exhibit 73 (Reformatted Calendar)

March 10/26/2004 10:57 AM

Sun	
Mon 1	GRC-Personal Umbrella audit
Tue 2	GRC-Personal Umbrella audit
Wed 3	JPW Asbestos Conf Call GRC-Personal Umbrella audit
Thu 4	Odyssey Re-Dominique Simeon/Roger Rossiter-Surety Renewal
Fri 5	Odyssey Re-Dominique Simeon/Roger Rossiter-Surety Renewal JPWOODS SURETY RECOMMENDED LINES FROM JPWOODS
Sat 6	
Sun 7	
Mon 8	Gib Brady and Dave Tritton-Benfield-Dinner
Tue 9	JPWoods Account Managers Meeting
Wed 10	JPWoods Account Managers Meeting
Thu 11	Tony Clayton/Harrington Syndicate
Fri 12	SURETY FIRM ORDER Tony Clayton/Harrington Syndicate
Sat 13	
Sun 14	
Mon 15	GRC Claims-Kathy Karnell, Beth Brenton, Martha Lindner
Tue 16	GRC Claims-Kathy Karnell, Beth Brenton, Martha Lindner
Wed 17	GRC Claims-Kathy Karnell, Beth Brenton,

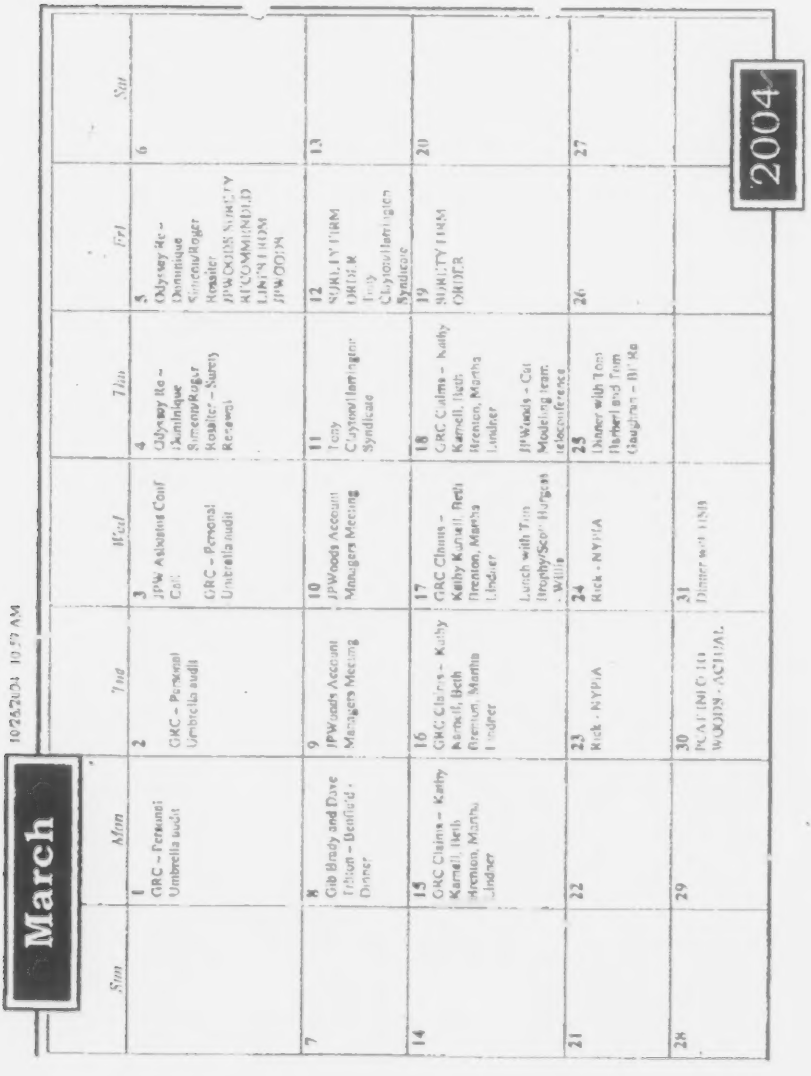
Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendants JPWoods Managers Meeting
Exhibit 73 (Reformatted Calendar)

Martha Lindner
Lunch with Tim Brophy/Scott Burgess Willis
Thu 18 GRC Claims-Kathy Karnell, Beth Brenton, Martha Lindner
JPWoods-Cat Modeling team teleconference
Fri 19 SURETY FIRM ORDER
Sat 20
Sun 21
Mon 22
Tue 23 Rick-NYPIA
Wed 24
Thu 25 Dinner with Tom Barberi and Tom Gaughran-BF Re
Fri 26
Sat 27
Sun 28
Mon 29
Tue 30 PCAT INFO TO WOODS-ACTUAL
Wed 31 Dinner with HSB

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendants JPWoods Managers Meeting
Exhibit 73 (Original Format)



Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant – 2004 Review
Exhibit 25, p.2

Comments: [Redacted] tends to work in a methodical and determined manner, his quality/quantity balance continues to be good and he committed extra time on a number of occasions in order to ensure deadlines were met. [Redacted] likes to be sure his work is complete, but at times he may be too thorough creating some redundancy. Accuracy complemented by efficiency s[redacted] goal.
[Redacted] has shown good balance between analyzing potential difficulties of a plan or strategy and being optimistic. Cutting over to ProCede this year will be a challenge and I expect that [redacted] will embrace its full potential.
During year-end processing, [redacted] committed extra effort and time to complete his responsibilities as well as assist others in completing theirs.
Seeing task to completion – The Letters of Credit imaging project was to have been completed by December 1, 2003 – it has not been finished. It must be bought to conclusion by May 1st.
Job Knowledge:
Give consideration to aspects such as:
- Comprehension
- Retention

□ Has comprehensive knowledge of the job. Consistently adds to job knowledge.
□ Has solid understanding of the job. Frequently adds to job knowledge.
x Understands the major aspects of the job. Retains

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant – 2004 Review
Exhibit 25, p.2

learning. Occasionally adds to job knowledge.
□ Does not consistently demonstrate adequate knowledge or major aspects of the job. Repetition of mistakes in some areas results in retraining.
□ Does not demonstrate knowledge of basic job concepts. Continuously repeats mistakes.

Comments: [Redacted] has added to his reinsurance knowledge by successfully completed ARe141. [Redacted] must continue his ARe studies and is expected to complete the ARe designation by the end of 2005. [Redacted] participated in company sponsored training in Access and Crystal. {Redacted] needs to continue to expand his understanding of reinsurance and it is expected that he ask questions and get involved in projects – he must be willing to go beyond previously perceived job boundaries.

[Redacted] has attended insurance claims audits and has visited JPWoods' office in order to gain first hand knowledge of their work process. [Redacted] is also a participant in our monthly recoverable meetings (asbestos and general recoveries) with JPWoods. [Redacted] mentioned in his pre-view questionaire that he becomes frustrated with the lack of explanations or understanding of certain aspects of his job. – [redacted] needs to be assertive in getting complete answers to his questions. If after he has exhausted his sources and is still uncertain or unclear he must pursue further explanation from me or Rick.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant – 2004 Review
Exhibit 25, p.2,6

Working Relationships:
Give consideration to aspects such as:
- Cooperation
- Ability to work for/with others
- Flexibility

□ Consistently maintains harmonious working relationships with diverse group. Excellent acceptance by others. Consistently communicates well with others.

x Often establishes harmonious relationships. Very good acceptance by others. Usually communicates well with others.

□ Relationships are generally positive. Good acceptance by others. May communicate well with others

□ Has difficulty in consistently establishing or maintaining harmonious relationships. Has difficulty in communicating with others.

□ Poor working relationships requiring frequent supervisory intervention. Consistent difficulty in communicating with others.

2

PERFORMANCE PLAN ACTION: State the agreed-up performance improvement objectives. Each objective should indicate an action plan and time frame for completion.

Factor Quality

Objective(s) To maximize ProCede potential in producing accurate, complete and timely

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant – 2004 Review
Exhibit 25, p.6

reinsurance accounting data through the use of designed electronic reports. Strive to aggressively pursue the timely collection of reinsurance recoverables – collection of outstanding balances within the first 90 days of the billing. To increase our ability to efficiently and accurately monitor our reinsurance recoverables, e.g. create crystal reports in ProCede that allow us to track reinsurer payment history, outstanding balances, billing information, etc.

Plan of Action -Pursue collections with vigor and tenacity. Be aggressive on recoveries in order to improve our collection effort. -Supervisor will seek the availability of professional training in collections – in order to aid in our loss recoverable process. -Don't settle for status quo – always look to find a more efficient way of completing your job. – Take time to ask yourself if a report or specific output makes business sense. If it doesn't, be assert[redacted] in your search for answers. –Use the phone to make contact with reinsurers who owe us money. Use e-mail as a follow-up and documentation tool.

Factor Productivity
Objective(s) [blank]
Plan of Action [blank]
Factor Job Knowledge
Objective(s) To attain the highest degree of technical reinsurance and reinsurance –accounting

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant – 2004 Review
Exhibit 25, p.6

expertise. To develop a solid understanding of ProCede.

Plan of Action -Continue successful completion of ARe coursework. Timeframe: complete ARe 142 – Fall '04. Complete the ARe program by 12/31/05. –Understanding of our reinsurance contracts-terms, conditions, specific articles, etc. – Understanding of our reinsurance treaties and how they relate to our primary policies as well as the involvement of the claims department. – Understanding of our claims system, Claims Work Station.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant - 2005 Review
Exhibit 24, p.7

Factor Job Knowledge

Objective(s) To attain the highest degree of technical reinsurance and reinsurance –accounting expertise thus becoming the best ceded reinsurance department in the business. To develop a solid understanding of ProCede. To strengthen knowledge and understanding of the reinsurance premium job tasks. To strengthen knowledge and understanding of Schedule F and our Annual Statement. To take responsibility for understanding how the reinsurance department fits into the corporate "bigger picture".

Plan of Action -Continue successful completion of ARe coursework. Timeframe: complete ARe 142 – Fall '05. Complete the ARe program by 12/2008. –Thorough understanding of our reinsurance contracts-terms, conditions and specific articles within our contracts. Read a different contract each month and review questions/comments with Supervisor. (Dave to schedule this training in April using LotusNotes) -Ongoing training (weekly/monthly) on Schedule F and Annual Statement items – to be scheduled by supervisor. –By 12/31/05, have a clear understanding how to navigate through ProCede. Participation in reinsurers meeting, broker meetings and reinsurance audits in order to gain additional knowledge of reinsurance.

Factor Working Relationships

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant – 2005 Review
Exhibit 24, p.7

Objective(s)	[blank]
Plan of Action	[blank]

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.1

From: Michael Evolo/UNIG
10/13/2004 06:11 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Re: Disability
History: This message has been replied to.
Grazyna,
The worksheet you prepared for me yesterday outlining your vacation time did not include 10/29, however, your email below does. ??? Please clarify and let me know.

As for your ARe exam, I presume, you will reschedule for the first quarter of 2005.
As you have mentioned, please complete an exhaustive list of your responsibilities that need to be completed during your absence.
Thanks -
Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662
Grazyna Christman/UNIG
[Picture]
Grazyna Christman/UNIG
10/08/2004 10:26 AM

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.1-2,

To: Michael Evolo/UNIG@UNIG
cc:
Subject: Disability
Mike,
Just to confirm our conversation this morning:
- my disability will start on 11/11/04 (day of surgery). I talked to Brent in HR and per his instructions called Prudential to initiate a claim;
- I will not be using my scheduled vacation time in December and will take it prior to the surgery as follows: Fridays 10/08, 10/15/ 10/22, 10/29 and 11/05 – quarter day each (total 1.25 days); Wednesday 11/10 – whole day. That adds up to 2.25 days, which according to my records I have available. Please let me know if in agreement.

- I talked to Cherie Mullen in regard to ARe exam – they will pull the form out;
- I anticipate to complete the quarterly tasks before my disability and will prepare a list of those, which will require attention in my absence.

1

Thank you for your support!
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica, NY 13503
Email: grazyna.christman@uticanational.com

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.2,4

Phone: 800/724-1914, ext. 2214 or 315/734-2214
Fax: 315/734-2662

2

[Picture]
Grazyna Christman @UTICANATIONAL.COM
03/26/2004 09:16 AM
To: Michael Evolo@UTICANATIONAL.COM
cc:
bcc:
Subject: RE: FW: RE: Coursework
Date: Friday, 26 March 2004 8:16 am ET
To: Michael Evolo@UTICANATIONAL.COM
From:Grazyna Christman @UTICANATIONAL.COM
Subject: RE: FW: RE: Coursework
Mike,

My apology, I did not mean to ignore you. Yes, I gave it a second though, and still have to say that my commitment will be for the fall semester.
Grazyna
Grazyna H. Christman
Reinsurance Accounting
Tel: (315) 734-2214
Fax: (315) 734-2662
Email: grazyna.christman@uticanational.com
----------(Forwarded letter 1 follows)----------
Date: Friday, 26 March 2004 8:12 am ET
To: Grazyna Christman
From: Michael Evolo

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.4-5

Subject: FW: RE: Coursework

G- May I have the answer please.
Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
Phone – 800.274.1914 Ext. 2544
E-Mail – michael.evolo@uticanational.com
Fax – 315.734.2662
----------(Forwarded letters 2 follows)----------
Date: Friday, 19 March 2004 8:32 am ET
To: Michael Evolo
From: Michael Evolo
Subject: FW: RE: Coursework
Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
4
Phone – 800.274.1914 Ext. 2544
E-Mail – michael.evolo@uticanational.com
Fax – 315.734.2662
----------(Forwarded letters 3 follows)----------
Date: Friday, 19 March 2004 8:32 am ET
To: Grazyna Christman
From: Michael Evolo
Subject: FW: RE: Coursework
G-
Would like to know if you have reconsidered your

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.5

time line for ARe 141?
Thanks –
Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
Phone – 800.274.1914 Ext. 2544
E-Mail – michael.evolo@uticanational.com
Fax – 315.734.2662
----------(Forwarded letters 4 follows)----------
Date: Friday, 15 March 2004 11:40 am ET
To: Michael Evolo
From: Michael Evolo
Subject: FW: RE: Coursework
Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
Phone – 800.274.1914 Ext. 2544
E-Mail – Michael.evolo@uticanational.com
Fax – 315.734.2662
----------(Forwarded letters 5 follows)----------
Date: Friday, 11 March 2004 1:58 pm ET
To: Grazyna Christman
From: Michael Evolo
Subject: FW: RE: Coursework
G-

Would prefer that you didn't wait that long.
Michael S. Evolo, CPCU, ARe
Reinsurance Department

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.5-6

Utica National Insurance Group
Phone – 800.274.1914 Ext. 2544
E-Mail – Michael.evolo@uticanational.com
5
Fax – 315.734.2662
----------(Forwarded letters 6 follows)----------
Date: Friday, 11 March 2004 1:38 pm ET
To: Michael Evolo
From: Grazyna Christman
Subject: FW: RE: Coursework

Mike, I planned to do it in the fall – Nov/Dec exam.
Thank you!
Grazyna
Grazyna H. Christman
Reinsurance Accounting
Tel: (315) 734-2214
Fax: (315) 734-2662
Email: grazyna.christman@uticanational.com
----------(Forwarded letter 7 follows)----------
Date: Friday, 11 March 2004 9:41 am ET
To: Grazyna Christman
From: Michael Evolo
Subject: Coursework
Grazyna,

I'd like you to get us all up and running again with course work. . . . . .do you intend to sign up to retake the ARe141 exam during May-June testing

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.6-7

period?
Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
Phone – 800.274.1914 Ext. 2544
E-Mail – Michael.evolo@uticanational.com
Fax – 315.734.2662 6
[Picture]
Grazyna Christman/UNIG
12/30/2002 10:55 AM
To: Michael Evolo/UNIG@UNIG
cc:
bcc:
Subject: RE: Coursework
Date: Monday, 30 December 2002 10:55am ET
To: Michael Evolo@UTICANATIONAL.COM
From:Grazyna Christman @UTICANATIONAL.COM
Subject: RE: Coursework
Mike,
I'm sorry, but I won't be able to commit myself to the exam during February-March testing window.
I had a follow up appointment in Cooperstown last Friday. Keeping Schedule F in mind, I had postponed my surgery till February – it's scheduled for 2/13/03. I'll be out on disability for a week or two. Under these circumstances all I can do is just take one day at a time.
Grazyna
==========

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant ARe Designation
Exhibit 88, p.7

Grazyna.Christman@uticanational.com
Phone: (315)734-2214
Fax: (315) 734-2994
----------(Forwarded letter 1 follows)----------
Date: Friday, 27 December 2002 7:16 am ET
To: Grazyna Christman
From: Michael Evolo
Subject: Coursework
Grazyna,

Would like to talk with you about course work. Do you intend to sit for an ARe exam during the February-March testing block? Looking into the future, what are your course work goals? Come by, let's talk about this.
Thanks--
Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
Phone – 800.274.1914 Ext. 2544
E-Mail – Michael.evolo@uticanational.com
Fax – 315.734.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant 2003 Promotion
Exhibit 72, p.3 (Reformatted)

For the Record 3

Utica life employee **Renee Baldwin** [picture] has been promoted to underwriter. Ms. Baldwin, a Utica employee since 1994 previously held the title of Underwriter Trainee. A graduate of Herkimer County Community College with an A.A.S. degree in business administration, she holds the ACS professional designation as well as ALU-Part I Certificate in Risk Selection. Ms. Baldwin also has completed additional industry-related course work.

Lisa Legando [picture] has been promoted to RFI Senior Claims Specialist. Formerly a Claims Specialist, Ms. Legando joined the company in 2000. She attended The Ohio State University and holds a B.S. degree in social work from Bowling Green University. Ms. Legando also holds the P&C and Life/Health licenses.

HO Reinsurance employee **David Raga** has been promoted to Senior Accountant. A Utica employee since 1989, Mr. Raga formerly held the title of Accountant II. He holds associate's and bachelor's degrees in accounting form Mohawk Valley Community College and SUNY at Utica-Rome, respectively. Mr. Raga, who earned the American Management Association's Certificate in Management, also has completed course work required for the ARe professional designation.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-8
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant 2003 Promotion
Exhibit 72, p.3 (Reformatted/Original Format)

Jennifer Tenney has been promoted to RFI Claims Specialist. Ms. Tenney, who previously served as a Claims Representative, joined Utica National in 2000. A graduate of the Ohio State University with a bachelor's degree in music performance, Ms. Tenney holds the AIC professional designation. She also completed several industry-related pictorials.

For the Record

BEST AVAILABLE COPY

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant - 2003 Review
Exhibit 26, p.2

Job Knowledge:
Give consideration to aspects such as:
- Comprehension
- Retention

□ Has comprehensive knowledge of the job. Consistently adds to job knowledge.
□ Has solid understanding of the job. Frequently adds to job knowledge.
x Understands the major aspects of the job. Retains learning. Occasionally adds to job knowledge.
□ Does not consistently demonstrate [redacted] knowledge or major aspects of the job. Repetition of mistakes in some areas results in retraining.
□ Does not demonstrate knowledge of basic job concepts. Continuously repeats mistakes.

Comments: [Redacted] has been a member of the Reinsurance team for only 6 months and has become exposed to many facets of Reinsurance. He has a fundamentally sound accounting background from his 13 years of experience in the accounting department and his comprehension and retention of the multiple aspects of reinsurance to date has been good.

I expect that [redacted] will continue broadening his knowledge of Reinsurance and suggested that he commit to continuing his education within the Reinsurance field – specifically with regards to the successful completion of the ARe program.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant - 2003 Review
Exhibit 26, p.2

Working Relationships:
Give consideration to aspects such as:
- Cooperation
- Ability to work for/with others
- Flexibility

□ Consistently maintains harmonious working relationships with diverse group. Excellent acceptance by others. Consistently communicates well with others.

x Often establishes harmonious relationships. Very good acceptance by others. Usually communicates well with others.

□ Relationships are generally positive. Good acceptance by others. May communicate well with others

□ Has difficulty in consistently establishing or maintaining harmonious relationships. Has difficulty in communicating with others.

□ Poor working relationships requiring frequent supervisory intervention. Consistent difficulty in communicating with others.

Comments: [Redacted] is extremely cooperative with both his supervisor and his customers, and he consistently demonstrates a "can do" – positive [redacted]. In many Team meeting, he has taken a positive outlook which has resulted in allowing for positive group discussion.
[Redacted] has taken the leadership role within the Reinsurance Team and has become their spokes-

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant - 2003 Review
Exhibit 26, p.2,6

person. He has also taken the lead role of mentoring our intern.

Attendance:

Give consideration to aspects such as:

- Absence
- Lost time since last review (excluding vacation) hrs.

x Extremely dependable. Outstanding record of attendance and availability.

□ Highly dependable with minimum loss of workdays..

□ Dependable. Absence record does not exceed company guidelines.

□ Sometimes less than dependable due to frequency of absence. Absence record is moving toward exceeding Company guidelines.

□ Not dependable. Loses considerable time and work due to absenteeism. Absence record exceeds company guidelines. Disciplinary action required.

Comments: [blank]

2

PERFORMANCE PLAN ACTION: State the agreed-up performance improvement objectives. Each objective should indicate an action plan and time frame for completion.

Factor Quality

Objective(s) To maximize ProCede potential in producing quality and accurate reinsurance accounting data. To enhance operational

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-3
Plaintiff's Rule 7.1 Response Filed 05/28/08
Sr Accountant - 2003 Review
Exhibit 26, p.6

efficiencies in billing and payment of reinsurance obligations.

Plan of Action -Learn the potentials of ProCede and exploit the possibilities. -Take time to step back and assess the situation – ask yourself, does it make sense? -Be aggressive in the learning of the system – constantly ask "why".

Factor Productivity

Objective(s) [blank]

Plan of Action [blank]

Factor Job Knowledge

Objective(s) To aspire to the highest degree of technical expertise.

Plan of Action -Successful completion of ARe coursework – a must! Timeframe: complete ARe 141 – Sept '03 and ARe 142 – Dec '03. –Use the company sponsored PC classes – use of Mindleaders online training for Access and Crystal training. Timeframe: Spring/Summer 2003. –Stay close to the changing marketplace through trade journals – get on the distribution list. –Attend Reinsurance lunches, broker meetings, claims audit in order to gain an understanding of the discipline.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Leader's Guide: Performance
Exhibit 27, p.5

- Employee's contribution to Group and departmental goals.
- Needed improvements identified in previous performance reviews.

GUILDLINES FOR EVALUATING PERFORMANCE

Preparation for the Review

The following steps will help the supervisor/manager evaluate the employee's performance and prepare for the performance review interview:

1. Set aside enough time to do the job carefully and thoroughly.
2. Review the notes of critical incidents (positive and negative) that have taken place since the last review and notes from interim review retained in the employee's personnel file.
3. Use a worksheet to note the employee's basis strengths and weaknesses, and write down illustrations for each strength and weakness before completing the review form.
4. Be realistic. Overrating, as well as underrating, can be detrimental.
5. Rely on facts. Do not allow personal biases, isolated incidents, or personality traits to distort the rating.
6. Compare the employee with the job requirements, not with another employee.
7. Formulate tentative conclusions, and try to analyze probable causes of factors affecting the

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Leader's Guide: Performance
Exhibit 27, p.5

employee's performance.

8. Consider extenuating circumstances.
9. Develop ideas for building on the employee's strengths.
10. Anticipate how the employee will react in the areas that will be discussed.

NOTE: For information about preparing effective, meaningful Performance review, refer to Performance Appraisal Expectations.

MAINTAING OBJECTIVITY IN RATING

Employee rating shall be supported with the inclusion of examples whenever possible in the evaluations. The following tendencies should be recognized and avoided by a supervisor/manager in order to keep ratings as objective as possible:

➢ "Halo Effect" – This is the tendency of the supervisor/manager to evaluate an employee by doing either of the following:

• Giving a rating of good for every factor of the evaluation if the employee's general performance is satisfactory.

• Finding nothing positive about an employee because his/her general performance is poor.

The supervisor /manager should remember that each employee has both strengths and weaknesses.

➢ Bias – This is the emotional tendency of the supervisor/manager to reward friends or those well likes by giving those employees good ratings and conversely, to punish those employees

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Leader's Guide: Performance
Exhibit 27, p.5-6

personally dislikes with poor ratings.

Date:02/05 Page 5

➢ Inaccurate Rating Because of Length of Service – This is the tendency to overrate long-service employees and to underrate short-service employees. The supervisor/manager assumes that the longer an employee performs a job the more knowledgeable and proficient the employee will become. This assumption is not necessarily true. Length of service in itself is not a measure of performance. In a performance review, how an employee performs his/her job is the object of the evaluation, not his/her length of service on the job.

➢ Personal Projection and Self-Identification – This is the tendency to rate an employee too subjectively. The supervisor/manager unconsciously feels that those employees who resemble the supervisor/manager in any way, whether it be in personality, physical appearance or work habits, are somewhat superior to employees who are different from the supervisor/manager.

➢ Loose Rating – This results when a supervisor/manager, in an attempt not to hurt any employee's feelings, gives all employees being evaluated rating that are too high to be realistic or accurate. Such inexact ratings are harmful to both

Appendix D

Case 6:06-cv-1392-GTS-GHL Document 40-4
To Plaintiff's Rule 7.1 Response Filed 05/28/08
Leader's Guide: Performance
Exhibit 27, p.6

the supervisor/manager and the employee. Areas of weakness in the employee's performance remain uncorrected if not mentioned in a performance review.

The accuracy and objectivity of "loose" ratings given by a supervisor/manager can be questioned if the following should arise:

- If an employee who has received loose ratings is considered for a promotion but is found to lack the knowledge, skills, and/or attitudes indicated on his/her ratings.
- If an employee should suddenly be subject to disciplinary action for instances for poor performance which had occurred over a period of time but had never been reported in the performance review.

➢ Tight Rating – This results when a supervisor/manager feels that all the employees being rated fall short of expected standards. No one in his/her estimation should ever receive a good rating.

➢ Personal Competitiveness – This is the tendency of the supervisor/manager to show personal competitiveness toward employees by doing either of the following:

- Identifying himself/herself as a member of the group being rated without a conscious awareness of this.

Feeling that the employee being rated represents a direct challenge to the job of the supervisor/,manager.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-4
Plaintiff's Rule 7.1 Response Filed 05/28/08
Leader's Guide: Performance
Exhibit 27, p. 6

IDENTIFYING CAUSES OF INADEQUATE PERFORMANCE

- If inadequate performance is to be the primary focus of the evaluation discussion, the supervisor/manager should make every effort to identify the specific causes of the inadequate performance before the review. Generally, the causes of inadequacies fall into the following categories:

1. Ability

- Does the employee lack specific skills? If so, what skills are needed?
- Does the employee need more work experience/
- Is the employee capable of learning the job?
- Has the employee's previous training been adequate?
- Is the employee required education for the job lacking?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
: Unlawful Harassment
Exhibit 82, p.1

[Picture]

o Question: Harassment must be either "severe" or "pervasive" to be considered unlawful. Which of the following is an example of harassment that meets the "severe" standard?

o The best answers are:

A. Sexual teasing that makes the work environment unbearable.

B. Unwanted physical contact of a sexual nature

C. Calling a coworker by a racial slur

D. A gender-related comment

o Explanation of the answer

Harassment that meets the severe standard is offensive behavior that only needs to happen *once* to be considered unlawful. Examples include unwelcome sexual contact and the use of racial slurs. Sexual teasing and a single gender-related comment to not meet the severe standard. Such conduct might meet the *pervasive* standard if it occurs *on an almost daily basis* and makes the work environment *intolerable* for the recipient.

Economic Harassment

"Economic harassment" generally involves harassing behavior that results in a monetary loss for an employee or significant changes in workload or work assignment. Economic harassment requires that the threat of job loss or the promise of job benefits actually result in some type of employment action, such as termination, promotion, demotion, or reassignment to a considerably different job.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 10/22/04 & 11/04/04 Emails
Exhibit 85, p.1

Michael Evolo/UNIG
11/04/2004 01:44 PM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Re: Responsibilities
Grazyna,
I'd recommend that you ask them questions to see if they understand what is expected of them. Leaving copious notes with specific information is another way. Their carelessness, and their not understanding something are two different things.
Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662
Grazyna Christman/UNIG
[Picture] Grazyna Christman/UNIG
11/04/2004 10:33 AM
To: Michael Evolo/UNIG@UNIG
cc:
Subject: Re: Responsibilities
Mike,
I appreciate your praise!
I had explained to Natalia, Josh and David, accordingly and to my best ability, what needs to be done in my absence

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 10/22/04 & 11/04/04 Emails
Exhibit 85, p.1-2

Please let me know HOW I CAN ASSURE that they understand what needs to be done, so that I will not be held accountable for their potential errors, when I come back from my disability leave.
Thank you!

Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica , NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914; ext.2214 or 315/734-2214
Fax: 315/734-2662
Michael Evolo/UNIG

1

11/04/2004 10:02 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Re: Responsibilities
Grazyna,
Looks like a good list. Remember, it is important that you explain what needs to be done, but even more critical is that she understands what needs to be done. I do not want to play the blame game later on so be sure you spend enough time with her, and that she completely understands your expectations of her. You can delegate responsibility; however, you can not

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-9
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 10/22/04 & 11/04/04 Emails
Exhibit 85, p.2

delegate accountability.
Grazyna Christman/UNIG
[Picture] Grazyna Christman/UNIG
11/04/2004 09:29 AM
To: Michael Evolo/UNIG@UNIG
cc:
Subject: Re: Responsibilities
Mike,
Please advise, if there is anything else you want me to explain to the intern (Natalia), besides items outlined previously and listed below:
- processing of HSB cash receipt
- updating subject premium Excel files for JPW contracts
- keying in Excel files commission detail for Swiss Re and Gen Re programs paid on the earned basis
- verifying items listed on various facultative monthly statements to the Facultative Trial Balance?

Thank you!
Grazyna H. Christman
Reinsurance Accounting
Utica National Insurance Group
P.O. Box 530
Utica , NY 13503
Email: grazyna.christman@uticanational.com
Phone: 800/274-274-1914, ext.2214 or 315/734-2214
Fax: 315/734-2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 06/28/05 Email
Exhibit 46

----- Forwarded by Nina Owens/UNIG on 6/28/2005 10:29 PM -----

Michael Evolo/UNIG
06/28/2005 05:01 PM
To: Nina Owens@UNIG
cc
Subject: Grazyna Christman

[Stamp]
Defendant's
Exhibit Q
11/7/2007 NL

Nina,

The following are additional examples of errors in Grazyna's job responsibilities. These errors were discovered after her departure on 2/21/05.

- Premium Fac for Berkley/BF Re was done incorrectly (08/04). The wrong commission rate was applied.
- Commerce Survey was reported incorrectly. The premiums were reported year to date and should have been quarterly.
- One of the Swiss contingent commission calculations ('01 a/o 12/04) was done incorrectly. Some of the primary E&O and Umbrella amounts were switched.
- Errors with the ceded commission regional office allocations on the 2004 third and fourth quarter Surety Quota Share settlements.
- She never completed the write offs, I requested, on her account reconciliations for the reinsurance payable and reinsurance clearing accounts

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant 06/28/05 Email
Exhibit 46

Any questions, please let me know.
Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant SDHR Extension Request Letters
Exhibit 49, p.3

GETNICK LIVINGSTON ATKINSON GIGLIOTTI & PRIORE, LLP Attorneys at Law, 258 Genesee Street, Utica, New York 13502
[stamp] Jun24 2005 DIVISION OF [not legible]
ALBANY REGIONAL OFFICE
Michael E. Getnick, John J. Livingston, Thomas L. Atkinson, Louis P. Gigliotti, Nicholas S. Priore, Janet M. Richmond*, David A. Murad+
(315) 797-9261 Fax (315) 732-0755
Mark P. Malak, Mary E. Johnson, Adam W. Meyers, Joseph A. DeTraglia◊, Andrew K. Ward, Patrick G. Radel
*Also admitted in D.C. & Iowa +Also admitted in Florida ◊Also admitted in Massachusetts

June 22, 2005
Ms. Linda Pitts, Investigator
New York State Division of Human Rights
Agency Building 2, 18th Floor
PO Box 2049
Albany, NY 12220
Re: Grazyna H. Christman v. Utica National Insurance Group SDHR Case No. 10105010

Dear Ms. Pitts:
This firm represents Utica National Insurance Group, Respondent in the above-referenced matter. This letter is written to confirm that the Respondent has been given until July 1, 2005 in which to file a

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-5
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant SDHR Extension Request Letters
Exhibit 49, p.3

response to the above complaint with the Division. Enclosed for the Division's files please find a completed Respondent Contact Information sheet for this case.

Thank you for your courtesy with respect to this matter. Please contact me if you have any questions or need any additional information.

Sincerely yours,

s/

Joseph A. DeTraglia

cc: Bernard J. Turi, Esq.

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
.. Defendant Ambiguous Emails
Exhibit 90; p.1

Michael Evolo/UTICANATIONAL.COM
02/26/2004 10:47 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: FW:Reinsurance Recoverables - De
Date: Thursday, 26 February 2004 10:47am ET
To: Grazyna.Christman@UTICANATIONAL.COM
From: Michael.Evolo@ UTICANATIONAL.COM
Subject: Fw: Reinsurance Recoverables – December 31, 2003
G –

You may find some interest in this document that Josh produces. Any questions, please let me know.

Michael S. Evolo, CPCU, ARe
Reinsurance Department
Utica National Insurance Group
Phone - 800.274.1914 Ext. 2544
Fax - 315.734.2662
- - - - - - - - - (Forwarded letter 1 follows) - - - - - - - - -
Date: Thursday, 26 February 2004 9:20 am ET

To: Doug Robinson
cc: Anthony.Paolozzi, Bernard.Turi, Bob.Dicks, Brian.Lytwynec, Daniel.O'Connell, David.Raga, Lou.Pallante, Michael.Evolo, Rick.Beidleman
From Josh.Watkins@UTICANATIONAL

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails
Exhibit 90, p.1

Subject: Reinsurance Recoverables – December 31, 2003
Good morning!
Please find attached, the Reinsurance Recoverable report as of December 31, 2003.
Thanks,
Josh Watkins
Reinsurance Accountant II
josh.watkins@uticanational.com
telephone: (315) 734-2857
facsimile: (315) 734-2662

---- (SEGMENT 8 IS UNVIEWABLE PC ATTACHMENT NAMED DECEMBER.DOC
---- (SEGMENT 9 IS UNVIEWABLE PC ATTACHMENT NAMED MONTHLYG.XLS
---- (SEGMENT 10 IS UNVIEWABLE PC ATTACHMENT NAMED MONTHLY0.XLS

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails
Exhibit 90, p.2 (Reformatted MS Excel Chart)

Reinsurance Recoverable: December 2000- December 2003 (does not include asbestos)

Dollars (In Millions)

20.0						
18.0						
16.0						
14.0						
12.0						
10.0					*Value1*	
8.0				*Value1*		*Value1*
6.0		*Value1*	*Value1*			
4.0	*Value1*					
2.0						
0.0	*Value2*	*Value2*	*Value2*	*Value2*	*Value2*	*Value2*
	Dec-00	Mar-01	Jun-01	Sep-01	Dec-01	Mar-02
20.0						
18.0						
16.0				*Value1*		
14.0						
12.0			*Value1*			
10.0	*Value1*	*Value1*				*Value1*
8.0						
6.0					*Value1*	
4.0						
2.0						
0.0	*Value2*	*Value2*	*Value2*	*Value2*	*Value2*	*Value2*
	Jun-02	Sep-02	Dec-02	Mar-03	Jun-03	Sep-03

Appendix D

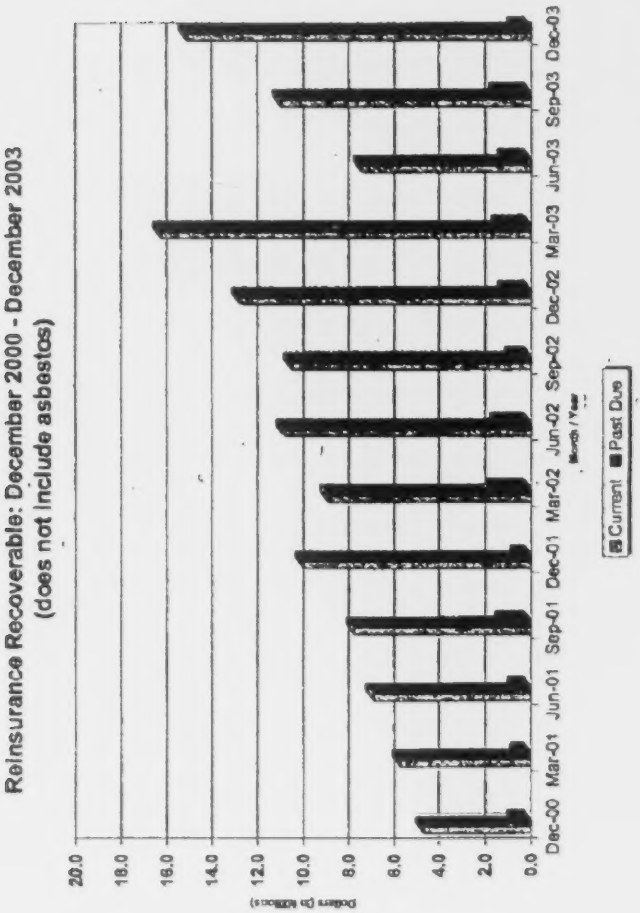
Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails
Exhibit 90, p.2 (Reformatted MS Excel Chart)

20.0
18.0
16.0
14.0 *Value1*
12.0
10.0
8.0
6.0
4.0
2.0
0.0 *Value2*
Dec-03

Month/Year
Value1 – Current *Value2* - Past Due

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails
Exhibit 90, p.2 (Original Format)



Appendix D

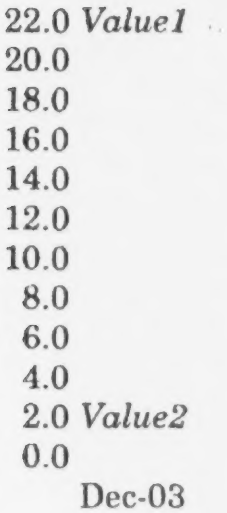
Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails
Exhibit 90, p.3 (Reformatted MS Excel Chart)

Reinsurance Recoverable: December 2000- December 2003 (includes asbestos)
Dollars (In Millions)

22.0						
20.0						
18.0						
16.0						
14.0						
12.0						
10.0					*Value1*	
8.0				*Value1*		*Value1*
6.0		*Value1*	*Value1*			
4.0	*Value1*					
2.0						
0.0	*Value2*	*Value2*	*Value2*	*Value2*	*Value2*	*Value2*
	Dec-00	Mar-01	Jun-01	Sep-01	Dec-01	Mar-02
22.0				*Value1*		
20.0						
18.0						
16.0						*Value1*
14.0					*Value1*	
12.0			*Value1*			
10.0	*Value1*	*Value1*				
8.0						
6.0						
4.0						*Value2*
2.0					*Value2*	
0.0	*Value2*	*Value2*	*Value2*	*Value2*		
	Jun-02	Sep-02	Dec-02	Mar-03	Jun-03	Sep-03

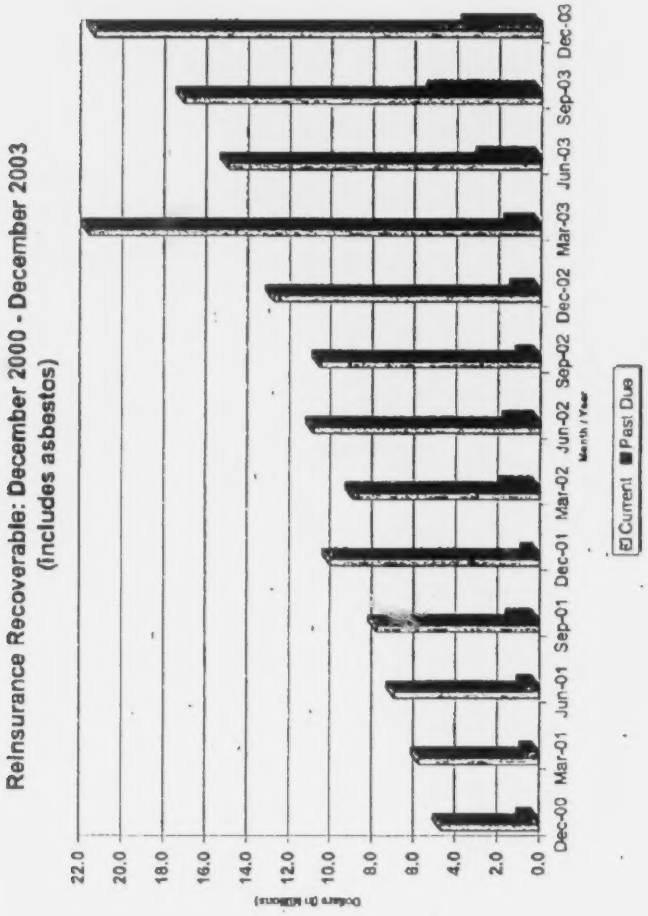
Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails
Exhibit 90, p.3 (Reformatted MS Excel Chart)



Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
-Defendant Ambiguous Emails
Exhibit 90, p.3 (Original Format)



Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-10
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Ambiguous Emails
Exhibit 90, p. 8

Michael Evolo/UNIG
02/01/2005 1008 AM
To: Grazyna Christman/UNIG@UNIG
cc:
bcc:
Subject: Re: Fw: Disbursement Requests
[attachment]
Grazyna,

It's not about being happy to comply, it's about taking the initiative to jump and assist others. I shouldn't have to dictate you what needs to be accomplished as you have been around long enough to know. Communicate with your co-workers and your will have your answers.
As for the disbursement requests, May is different than January/February, the two months that we are tasked with getting Schedule F complete. As I have mentioned countless times, you must be able to intuitively realize what is a priority and what isn't. These tasks are not new and you have been handling them for years.
Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant I Job Class 9 Description
Exhibit 65, p.1

[Logo] UTICA NATIONAL INSURANCE GROUP
[Handwritten] Job description I, II, Senior

JOB DESCRIPTION

POSITION: Accountant I	DEPARTMENT: Finance
JOB CODE: 415	CLASS: 9
STATUS: Non-Exempt	REVIEWED: 1/00
	REVISED: 3/03

I. REPORTS TO: Director/Manager
II. JOB DESCRIPTION: Under direct supervision, assist in the preparation of financial statement/tax returns through analysis of information related to the various inputs to the general ledger completion of workpapers, completion of journal entries, research of problem or processing errors, reconciliation of accounts and completion of reports as needed. Included is a basic understanding of statutory accounting and an ability to understand and use personal computer and related desktop applications as an integral part of daily work responsibilities. Ability to analyze and investigate problems or questions by using the appropriate application and skills. Any other duties or assigned tasks as requested by the Director/Manager.

JOB SPECIFICATIONS

POSITION: Accountant I	DEPARTMENT: Finance
STATUS: Non-Exempt	REVIEWED: 1/00
	REVISED: 3/03
JOB CODE: 415	CLASS: 9

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant I Job Class 9 Description
Exhibit 65, p.1

1. EDUCATION: - Associate degree or equivalent business experience in related field
   - Insurance coursework a plus.
2. COURSEWORK: IIA General Insurance Series, helpful
3. EXPERIENCE: Not mandatory, but helpful

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant II Job Class 11 Description
Exhibit 66, p.1

[Logo] UTICA NATIONAL INSURANCE GROUP
JOB DESCRIPTION

POSITION: Accountant II	DEPARTMENT: Finance
JOB CODE: 416	CLASS: 11
STATUS: Exempt	REVIEWED: 1/00
	REVISED: 8/04

I. REPORTS TO: Director/Manager
II. JOB DESCRIPTION: Under general supervision, prepare financial statements/tax returns through proper understanding and application of statutory accounting principles and procedures. Included is a thorough knowledge of the company's requirements and processing schedule of financial activities related to closing a period.
With the knowledge and skills, complete analysis of information related to the various inputs to the general ledger, completion of workpapers, completion of journal entries, research of problem or processing errors, reconciliation of accounts and completion of reports as needed. Included is the ability to use desktop personal computer applications to accomplish the responsibilities in an efficient manner.
Ability to handle more complex assignments and to be able to assist and guide less experienced accounting staff members. Proficient in analyzing and investigating problems or questions by using the appropriate applications and skills. Any other duties

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 40-7
Plaintiff's Rule 7.1 Response Filed 05/28/08
Defendant Accountant II Job Class 11 Description
Exhibit 66, p.1

or assigned tasks as requested by the Director/Manager.

JOB SPECIFICATIONS

POSITION: Accountant II	DEPARTMENT: Finance
JOB CODE: 416	CLASS: 11
STATUS: Exempt	REVIEWED: 1/00
	REVISED: 8/04

1. EDUCATION: - Bachelor's degree in related field
   - Insurance coursework, a plus.
2. COURSEWORK: - IIA General Insurance Series, helpful
   - AIAF, ARE, CPCU, a plus

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant 02/21/05 Email
Exhibit 110

From: Michael Evolo/UNIG <Michael Evolo/UNIG@unig>
To: Martha Dumont/UNIG
Subject: Re: Fw: Treasury Mailing
Date: 2/21/2005 1:28:05 PM
Martha,

I believe Dave has left you a v-message regarding this matter. We are just waiting for George and Fran to sign. Please let us know if you need anything further.

Michael S. Evolo, CPCU, ARe
Supervisor of Reinsurance Operations
Utica National Insurance Group
315.734.2544
800.274.1914 Ext. 2544
Fax – 315.734.2662

Martha Dumont/UNIG
02/21/2005 12:39 PM
To: Grazyna Christman/UNIG@UNIG
cc: Michael Evolo/UNIG@UNIG, Daniel O'Connell/UNIG@UNIG
Subject: FW: Treasury Mailing
How are you coming with the Treasury Schedule F and Schedule of Excess of Risks? Will I have them today?

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiffs Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant 02/21/05 Email
Exhibit 110

I just made a list of all the mailings that must actually be "received" by March 1st. The U.S. Treasury mailing must be received by March 1st and I need to mail it tomorrow along with 20 others that must be "received" by March 1st.
Let me know today. md

Martha E. Dumont, CPA, ARe
Martha.dumont@uticanational.com
Phone: 315-734-2868
Fax: 315-734-2994
------ Forwarded by Martha Dumont/UNIG on 02/21/2005 12:33 PM -----
Martha Dumont/UNIG
02/14/02005 09:06 AM

To: Grazyna Christman/UNIG
cc:
Subject: Treasury Mailing

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for
Protective and Confidentiality Order Filed 09/02/08
Defendant's 02/21/05 US Treasury, p.5
Exhibit 111

8/29/08

Schedule F @12/31/2004 Plan of Action		
1) Interfaces		Target Date
a) Premium Written Non-Treaty		
	Grazyna	1/12-14/2005
b) Premium Written Treaty		
	Grazyna	1/12-14/2005
c) Unearned Premium Non-Treaty		
	Grazyna	1/13-14/2005
d) Unearned Premium Treaty		
	Grazyna	1/15-14/2005
e) Reinsurance Ceded Payable		
	Grazyna	1/12-14/2005
f) Loss Reserves Non-Treaty		
	Josh	1/12-14/2005
g) Loss Reserves Treaty		
	Josh	1/12-14/2005
h) Loss Expense Reserves Treaty		
	Josh	1/12-14/2005
2) Control Sheets		
a) Keying Amount	Grazyna/Intern	1/17/2005
b) Cross Check with corporate		
	Josh	1/21/2005
3) Manual Coding		
a) Cash received	TEAM	1/5/2005
b) Reins Recovered	TEAM	1/14/2005
c) Premium	TEAM	1/14/2005
c) LOC's	David	1/31/2005

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant's 02/21/05 US Treasury, p.5
Exhibit 111

4) IBNR & Adequacy	David/Josh	1/17/2005
5) Schedule F Penalty	Josh	1/31/2005
6) Schedule F part 8	Grazyna	1/31/2005
7) Schedule F Finals	Josh	2/5/2005
8) Download in TSO for AS2000	Josh & David	
Lloyds		2/1/2005
Unit		2/2/2005
UNAC		2/2/2005
RFI		2/3/2005
Graphic		2/3/2005
Utica		2/4/2005
Combined		2/25/2005
9) Assumed Schedule F		
	Grazyna	2/7/2005
10) Other States Schedule F		
	Grazyna	2/17/2005
11) Treasury Schedule		
	Grazyna	2/17/2005
12) Commerce Survey		
	Grazyna	3/31/2005

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant's 11/01/07 Email
Exhibit 112

From: JDeTraglia@glagplawfirm.com <JDeTraglia@glagplawfirm.com>
To: Dane Austin/UNIG; Michael Evolo/UNIG; Nina Owens/UNIG
Date: 11/1/2007 3:08:17 PM
Attachment N1: ATT00344.htm
Attachment N2: NotesDocAssentor.NOTE
Nina, Dane and Mike,
Your depositions will be held next Thursday, November 8 at our law offices. I will be coming to your offices on Monday the 5th for preparation sessions with each of you as previously arranged.
This afternoon our office's runner is hand-delivering to your offices (to the attention of Nina Owens/ Bernard Turi) an envelope containing four (4) identical sets of documents for review prior to Monday. It is most important for Mike to study these documents but the rest of you should also be aware of their contents.
The documents are limited to the period of time from the date of Ms. Christman's written warning on January 6, 2005 through her termination date of February 21, 2005. The reason is twofold: (1) to respond to Ms. Christman's request for any documents supporting the Company's decision to terminate her employment that were not already provided to the New York State Division of Human Rights; and (2) to focus your attention on her job

Appendix D

Case 6:06-cv-1392-GTS-GHL
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performance during that period of time in order to justify that termination was the appropriate employment decision (as opposed to further warnings, probation, suspension, etc.). I also included Ms. Christman's document dated February 4, 2005 which purportedly responded to the January 6, 2005 warning but which she apparently did not deliver until the February 21, 2005 termination meeting. There is a large volume of paperwork in connection with this case so I am trying to narrow the scope as much as possible for now. Most of these documents will be turned over to her attorney unless you don't believe they support the Company's termination decision. If so, please let me know right away. Please feel free to contact me with any questions and concerns. Your attention to this matter is appreciated.

Thanks,

Joe

Joseph A. DeTraglia, Esq.
Getnick Livingston Atkinson Gigliotti & Priore, LLP
258 Genesee Street, Suite 401
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This e-mail transmission contains information from the law firm of Getnick Livingston Atkinson Gigliotti

Appendix D

Case 6:06-cv-1392-GTS-GHL
U.S. District Court NYND Document 49-3
Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08
Defendant's 11/01/07 Email
Exhibit 112

& Priore, LLP which is privileged and/or confidential. Such information is intended for use only by the addressee(s) indicated above. If you are not the intended recipient, please be notified that any disclosure, copying, distribution, use or the taking of any action in reliance on the contents of such information id strictly prohibited.

Appendix D

2006 The Older Worker Advantage, Excerpts

THE OLDER WORKER ADVANATGE
Making the Most of Our Aging Force
GORDON F. SHEA and ADOLF HAASEN
PRAEGER Westport, Connecticut London
Library in Congress Cataloging-in-Publication Data
Shea, Gordon F., 1925-
The older worker advantage: making the most of our working workforce / Gordon F. Shea and Adolf Haasen. p. cm.
Includes bibliographical references and index.
ISBN 0-275-98701-9 (alk. Paper)
1. Older people-Employment I. Haasen, Adolf. II. Title HD6279.554 2006 331.398-dc22 2005019186
British Library Cataloguing in Publication Data is available. Copyright © 2006 by Gordon Shea and Adolf Haasen.
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Printed in the United States of America [logo]
The paper used in this book complies with the Permanent Paper Standard issued by the National Information Standards Organization (Z39.48-1984).
10 9 8 7 6 5 4 3 2 1

CHAPTER 4
Shedding Common Assumptions. Myths, and

Appendix D

2006 The Older Worker Advantage, Excerpts

Stereotypes about Older Employees

While the behavior of every age group is stereotyped by others to some degree, no group is as negatively affected by such generalizations as the elderly; at least other age groups are expected to outgrow their idiosyncrasies.

Older people are often perceived ass poor, isolated, senile, unhappy and unhealthy or as very well-off, playing endless golf into the sunset of their lives. As employees, they are often viewed as unmotivated and less creative and less productive than younger workers. Under these assumptions, they don't seem to offer characteristics that lead to promotions or to selections for new learning opportunities.

Several studies have shown that managers sometimes engage in age discrimination without being aware of it. Years, back, in 1977, a survey conducted of 1,570 subscribers to the *Harvard Business Review* sought to assess the degree to which age discrimination affected managerial decisions. [1] The respondents were divided into two groups, and each group was asked to evaluate a series of problems involving poor worker performance and decisions regarding training and promotions. The problems presented to the two groups were virtually identical except for the age of the employee involved in the incident. One-half dealt with a younger worker and the other half with an older one.

In each of the situations, the older employee fared worse in the respondents' evaluations, regard-

less of the person's qualifications. When both an older and a younger worker were failing to adequately perform the job, the older employee was seen as resistant to change, and the respondents recommended reassignment. Those surveyed believed, however, that the younger worker could benefit from an "encouraging talk." Similarly, the older, equally qualified worker was perceived as less motivated to keep up with the changing technology, as less creative, and as less able to deal with job-related stress. Age bias has been around for a long time.

What this and more recent research reflect is the self-fulfilling nature of discriminatory thinking. There is a tendency among some managers (as well as perhaps among many people in general) to believe that workers gradually loose their abilities as they age. Because advancement is usually based on the organization's view of the employee's potential, older workers are frequently not considered as candidates for such opportunities; rather they may be seen as obstacles to the company's growth.

In many cases the ideal candidate for a particular job is believed to be an individual in his or her 20s with a few years of work experience. Several studies suggest that many personnel specialists and managers have set their minds on this image and will not consider an older worker who is better qualified and willing to accept the proffered salary. Moreover, having been raised in society where "ageism" is rampant, older employees all too often begin to act the part expected of them.

Appendix D

2006 The Older Worker Advantage, Excerpts

CULTURAL NOTIONS ABOUT AGE AND WORK

The mistaken notions about older people are so numerous and widespread that not all of them can be covered in a single chapter. Therefore, specific assumptions related to productivity, health and learning are dealt with later. Here we explore eight of the more general concepts that many people perceive as characterizing aged employees and the negative impact of such generalizations on older people in the workplace:

1. Older people should retire to make way for younger employees.
2. Most older people are pretty much alike.

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1 B. Rosen, "Management Perceptions of Older Employees," *Monthly Labor Review* 10, no. 5 (1978): 33-35.

170

(3)

No. 10-139

Supreme Court, U.S.
FILED
AUG 26 2010
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,

Petitioner,

v.

UTICA NATIONAL INSURANCE GROUP, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition, where the Second Circuit's Order affirming the District Court's thorough analysis of Petitioner's evidence does not conflict with a decision of this Court or a Court of Appeals, does not implicate an important federal question that has not been settled by this Court, and does not depart so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

LIST OF PARTIES

The following list identifies all of the parties appearing both here and before the United States Court of Appeals for the Second Circuit: (1) Grazyna H. Christman, Petitioner; and (2) Utica Mutual Insurance Company, Respondent.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Sup. Ct. R. 29.6, Utica National Insurance Group, Inc. does not exist; rather, the correct name of Respondent is Utica Mutual Insurance Company, a mutual insurance company organized under the laws of New York State. Utica Mutual Insurance Company has never been a publicly traded corporation, has never issued any stock, and has never had a parent corporation. Utica Mutual Insurance Company is one of several insurance companies collectively referred to as the Utica National Insurance Group.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	iv
OPINIONS AND ORDERS BELOW	1
SUMMARY OF ARGUMENT	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	2
CONCLUSION	6

TABLE OF CITED AUTHORITIES

Page

CASES

Booker v. Brown & Williamson Tobacco Co., Inc., 879 F.2d 1304 (6th Cir. 1989) 3

Brady v. Office of Sergeant at Arms, 520 F.3d 490 (D.C. Cir. 2008) 3

Brown v. Coach Stores, Inc., 163 F.3d 706 (2nd Cir. 1998) 3

Carlile v. South Routt School District, 739 F.2d 1496 (10th Cir. 1984) 3

Everroad v. Scott Truck Systems, Inc., 604 F.3d 471 (7th Cir. 2010) 3

Geraci v. Moody Tottrup, International, Inc., 82 F.3d 578 (3rd Cir. 1996) 3

Griffith v. City of Des Moines, 387 F.3d 733 (8th Cir. 2004) 3

Hawkins v. PepsiCo. Inc., 203 F.3d 274 (4th Cir. 2000), *cert. denied* 531 U.S. 875 (2000) 3

Lockridge v. The University of Maine System, 597 F.3d 464 (1st Cir. 2010) 3

Cited Authorities

	Page
Lynn v. Deaconess Medical Center, 160 F.3d 484 (8th Cir. 1998)	5, 6
Maddox v. Claytor, 764 F.2d 1539 (11th Cir. 1985)	3
McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)	3, 5
Sherrod v. American Airlines, Inc., 132 F.3d 1112 (5th Cir. 1998)	3
Vasquez v. County of Los Angeles, 349 F.3d 634 (9th Cir. 2004)	3

RULES

United States Supreme Court Rule 10	1, 3, 6
United States Supreme Court Rule 10(a)-(c)	1
United States Supreme Court Rule 15.2	4

OPINIONS AND ORDERS BELOW

Christman v. Utica National Insurance Group, Inc., __ F.Supp.3d __, 2009 WL 838128 (N.D.N.Y. 2009), *aff'd Christman v. Utica National Insurance Group, Inc.*, __ F.3d __, 2010 WL 1718737 (2d Cir. 2010); *see also Christman v. Utica National Insurance Group*, N.Y.S.D.H.R. Case No. 10105010 Determination and Order After Investigation (June 16, 2006).

SUMMARY OF ARGUMENT

Petitioner has presented no "compelling reasons" for the granting of her Petitioner for a Writ of Certiorari ("Petition"). *See* Sup. Ct. R. 10. Specifically, Petitioner has failed to demonstrate that the Second Circuit's April 29, 2010 Summary Order ("Order") is in conflict with a decision of this Court or another Court of Appeals, implicates an important federal question that has not been settled by this Court, or departs so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. *See* Sup. Ct. R. 10(a)–(c). Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

Following Petitioner's termination of employment by Respondent in February 2005 for unsatisfactory job performance, Petitioner filed a complaint of discrimination against Respondent in April 2005 with both the New York State Division of Human Rights ("NYSDHR") and the United States Equal Employment Opportunity Commission ("EEOC") alleging disability,

age and gender discrimination. The NYSDHR investigated Petitioner's complaint and in June 2006 issued a Determination and Order After Investigation dismissing her complaint. In August 2006, the EEOC dismissed Petitioner's dual-filed charge of discrimination against Respondent.

In November 2006, Petitioner filed an action against Respondent in the United States District Court for the Northern District of New York ("District Court") alleging disability, age and discrimination. Following discovery and motion practice, on March 27, 2009 the District Court, *inter alia*, granted summary judgment to Respondent and dismissed the action in its entirety. Petitioner appealed the District Court's judgment to the United States Court of Appeals for the Second Circuit, which affirmed the District Court's decision in all respects on April 29, 2010. Petitioner then filed the instant Petition for a Writ of Certiorari and Appendix.[1]

REASONS FOR DENYING THE PETITION

The Second Circuit's decision below does not conflict with a decision of this Court or any Court of Appeals, does not implicate a federal question that has not been decided by this Court, and does not depart so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Petitioner simply has not carried her heavy

[1] Petitioner's reproduction of the decisions by the Courts below as Appendices A and B contains typographical errors that are not present in the decisions originally issued by the Courts.

burden of demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

In their decisions below, the Second Circuit and District Court thoroughly analyzed Petitioner's employment discrimination claims under this Court's well-established *McDonnell Douglas* burden shifting standard. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). That standard is uniformly applied throughout the Circuit Courts of Appeals. *See, e.g., Brady v. Office of Sergeant at Arms*, 520 F.3d 490 (D.C. Cir. 2008); *Lockridge v. The University of Maine System*, 597 F.3d 464 (1st Cir. 2010); *Brown v. Coach Stores, Inc.*, 163 F.3d 706 (2nd Cir. 1998); *Geraci v. Moody-Tottrup, International, Inc.*, 82 F.3d 578 (3rd Cir. 1996); *Hawkins v. PepsiCo. Inc.*, 203 F.3d 274 (4th Cir. 2000), *cert. denied* 531 U.S. 875 (2000); *Sherrod v. American Airlines, Inc.*, 132 F.3d 1112 (5th Cir. 1998); *Booker v. Brown & Williamson Tobacco Co., Inc.*, 879 F.2d 1304 (6th Cir. 1989); *Everroad v. Scott Truck Systems, Inc.*, 604 F.3d 471 (7th Cir. 2010); *Griffith v. City of Des Moines*, 387 F.3d 733 (8th Cir. 2004); *Vasquez v. County of Los Angeles*, 349 F.3d 634 (9th Cir. 2004); *Carlile v. South Routt School District*, 739 F.2d 1496 (10th Cir. 1984); *Maddox v. Claytor*, 764 F.2d 1539 (11th Cir. 1985).[2]

Petitioner does not contend in her Petition that the Courts below applied the wrong legal standard to her

---

[2] Indeed, Petitioner acknowledges in her Petition that the Second Circuit did, in fact, apply the well-established *McDonnell Douglas* standard to the facts of her case. *See* Petition at page 27.

claims. Instead, Petitioner appeals to this Court because she believes the facts of her case should have been analyzed in a manner more favorably to her. In short, Petitioner wants to reargue her case before this Court in hopes of receiving a better outcome.[3]

Turning to her questions presented, Petitioner cites no conflicting decisions of this Court or any Circuit Courts for her first question presented, and Petitioner cites no authority at all, let alone conflicting authority, for her second question presented. It is respectfully submitted that no authority or other basis exists to support the questions presented by Petitioner and therefore the Petition should be denied pursuant to this Court's rules.[4]

The only authority Petitioner cites as a purported conflict between the Circuit Courts rests within her third question presented. However, the Petition should be denied for two reasons. First, Petitioners' third question presented, like the first two, involves nothing more than an attempt to reargue facts that were fully considered and rejected by the Courts below under the proper legal standards. Therefore, the Petition should be denied on that basis alone.

---

[3] Petitioner acknowledges in her Petition that she did not timely file a petition for rehearing with the Second Circuit. *See* Petition at page 1.

[4] In accordance with Sup. Ct. R. 15.2, Respondent articulated its sole question presented based on this Court's rules.

Secondly, there is simply no conflict whatsoever between the Second and Eighth Circuit Courts. In support of her Petition, Petitioner cites a twelve year old decision, *Lynn v. Deaconess Medical Center*, 160 F.3d 484 (8th Cir. 1998), for the proposition that this Court's intervention is needed to resolve a conflict between the Second and Eighth Circuits.[5] However, the Eighth Circuit in *Lynn* applied the same *McDonnell Douglas* burden-shifting standard applied by the Second Circuit below as follows: "[Lynn's] claims are analyzed under the three-stage burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green* . . . and applied in countless other cases." *Lynn*, 160 F.3d at 487 (citation omitted). Thus, there is no conflict to resolve.

Because Petitioner has not challenged the Second Circuit's *use* of the *McDonnell Douglas* standard, the same standard that the Eighth Circuit used in *Lynn*, all that is left for Petitioner to challenge is the Second Circuit's *application* of that standard as varying from the Eighth Circuit's application of it in *Lynn*. But again, that provides no basis for an appeal to this Court. And even if it did, the facts of Petitioner's case are not identical to the facts presented in *Lynn*, where the Eighth Circuit's weighing of the particular facts at issue there led to the particular outcome reached in that case.[6] Thus, the Petition should be denied.

---

[5] Petitioner does not cite a more recent decision of the Eighth Circuit as purportedly conflicting with the Second Circuit's decision below.

[6] This Court has stated: "The facts necessarily will vary in Title VII cases." *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973).

Finally, it should be noted that the Eighth Circuit ruled in *Lynn* that the lower court had misapplied the "similarly situated" concept in discrimination claims as follows: "We think the district court applied the 'similarly situated' concept too narrowly . . . ." *Lynn*, 160 F.3d at 488. Here, however, Petitioner does not contend that the Second Circuit applied the "similarly situated" concept too narrowly, but rather argues that the Courts below should have weighed differently the record evidence concerning similarly situated employees. It is simply not a function of this Court to "re-weigh" the evidence analyzed under the correct legal standards by the Courts below. Accordingly, the Petition should be denied under this Court's rules, including Sup. Ct. R. 10.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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170

No. 10-139

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,
Petitioner

v.

UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF APPENDICES iii

TABLE OF CITED AUTHORITIES iv

REASONS FOR DISMISSING RESPONDENT'S BRIEF IN OPPOSITION 1

I. Respondent continues to maintain that Petitioner is a former employee of Utica Mutual Insurance Company 1

II. Respondent attempts to poison the well throughout this case by making sweeping references to what happened procedurally at the SDHR/EEOC 2

III. Respondent shuffles the order of discrimination charges in Petitioner's SDHR claim and her subsequent Complaint and Appeal filed with the lower courts in a way that it favors Respondent's argument 3

IV. Throughout the entire discovery and motion process, Respondent attempts to dissemble by filing a cross motion for protective and confidentiality orders in August 2008 and the second motion for protective order in September 2008 5

V. Respondent asserts that the Second Circuit and District Court thoroughly analyzed Petitioner's employment discrimination claim

Contents

Page

under well-established *McDonnell Douglas* burden shifting standard. 7

CONCLUSION 13

TABLE OF APPENDICES

Page

APPENDIX E – Additional Documentation . . . 1a

Utica National Insurance Group
Respondent's Overtime Payment Check
& Envelope 1a

State of New York Executive Department
Division of Human Rights
INTER-OFFICE MEMORANDUM, p.5 . . . . . 3a

State of New York Executive Department
Division of Human Rights
COMPLAINANT EXHIBIT CONTROL SHEET 5a

State of New York Executive Department
Division of Human Rights NYS DHR
EVENT HISTORY WITH COMMENTS, p.4 . . . 6a

U.S. Court of Appeals for the Second Circuit
Connie Mazariego Email 06/03/10 . . . . . 9a

U.S. Court of Appeals for the Second Circuit
Date Stamped Envelope 06/04/10 . . . . . 10a

Petitioner's Verizon Telephone Bill, p.3 . . . . . 11a

TABLE OF CITED AUTHORITIES

Page

Cases

Davis v. Avaya, Inc., 295 F.App'x 380 (2d Cir. 2008) 10

Desert Palace, Inc. v. Costa, 539 U.S. 90 (2003) 11

Farias v. Instructional Sys., Inc., 259 F.3d 91 (2d Cir. 2001) 10

Federal Express Corp. v. Holowecki, 552 U.S. ___, ___, 128 S.Ct. 1147 (2008) 12

Grady v. Affiliated Central, Inc., 130 F.3d 553 (2d Cir. 1997) 6

Gross v. FBL Financial Services, Inc., 129 S. Ct. 2343 (2009) 10, 11, 12

Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982) 3

Lynn v. Deaconess Med. Ctr.-West Campus, 160 F.3d484 (8th Cir. 1998) 9, 12

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) 7, 8, 9, 10

Oest v. Illinois Dep't of Corrections, 240 F.3d 605 (7th Cir. 2001) 10

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) 11

University of Tennessee v. Elliott, 478 U.S. 788 (1986) 3

Cited Authorities

Page

Statutes & Authorities

29 U.S.C. §621 *et seq* 4, 9, 10, 11, 12

42 U.S.C. §2000e *et seq* 3, 4, 9, 10, 11, 12

Civil Rights Act of 1991 12

F.R.C.P. Rule 11(b) 6

F.R.C.P. Rule 56 5

Freedom of Information Act (FOIA) 2

NYSCRL 9, 10

NYS Executive Law (Human Rights Law),
Article 15 . . . . . 4, 10

Supreme Court Rules 7, 8, 9, 12, 13

Other Citations

Webster's Unabridged Dictionary, Copyright
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REASONS FOR DISMISSING RESPONDENT'S BRIEF IN OPPOSITION

In support of her opposition to Respondent's Brief in Opposition ("Brief") to the Petition for a Writ of Certiorari, Petitioner wishes to direct the Court's attention to the additional facts that were part of proceedings in the lower courts, the facts related to the New York State Division of Human Rights ("SDHR") claim and few other documented facts, disclosure of which becomes necessary at present.

I. Respondent continues to maintain that Petitioner is a former employee of Utica Mutual Insurance Company.

Under List of Parties, Respondent states that "[t]he following list identifies all of the parties appearing both here and before the United States Court of Appeals for the Second Circuit: (1) Grazyna H. Christman, Petitioner; and (2) Utica Mutual Insurance Company, Respondent. *See* Brief, p.*ii*. But Petitioner wishes to point the Court's attention to yet another document implying Utica National Insurance Group ("UNIG") as her employer who paid her salary, as shown in App.E-1a-2a.

Respondent's website explains: "Utica National Insurance Group is a trade name under which [its] individual companies do business and does not, itself, issue insurance policies. Insurance products described in uticanational.com are underwritten by the following member companies of the Utica National Insurance Group: ▪ Utica Mutual Insurance Company ▪ Graphic Arts Mutual Insurance Company ▪ Republic-Franklin Insurance Company ▪ Utica National Insurance Company of Texas ▪ Utica

National Assurance Company ▪ Utica Lloyd's of Texas ▪ Utica Specialty Risk Insurance Company." (*See* http://www.uticanational.com/Company/member companies.asp)

II. Respondent attempts to poison the well throughout this case by making sweeping references to what happened procedurally at the SDHR/EEOC.

Respondent writes in its Brief that "[t]he NYSDHR investigated Petitioner's complaint and in June 2006 issued a Determination and Order After Investigation dismissing her complaint. In August 2006, the EEOC dismissed Petitioner's dual-filed charge of discrimination against Respondent." *See* Brief, p.2; *see* also App.B-23a-24a, Footnote 3.

The SDHR proceedings [1] are separate from Petitioner's action before this Court. What a state administrative agency does, has no effect, res judi-

---

[1] Under Freedom of Information Act (FOIA), Petitioner obtained a copy of the entire SDHR file. The "Final Investigation Report and Basis of Determination" reveal that the SDHR "found no probable cause to support the allegations of the complaint." *See* App.E-4a. The SDHR "Complaint's Exhibit Control Sheet" reveals that the agency was apparently overwhelmed by the volume of Petitioner's documentation as it wrote under Description: "Complainant's rebuttal with attachments too many to list!" [Emphasis added]. *See* App.E-5a. The SDHR "Event History with Comments" shows that 405 pages of the complainant's rebuttal were mailed to respondent's attorney on January 18, 2006. *See* App.E-7a. Virtually all this documentation was subsequently submitted to the District Court as Exhibits attached to Plaintiff's Rule 7.1 Response to Defendant's Statement of Material Facts and her Additional

(Cont'd)

cata or otherwise, on the ability of a plaintiff to bring a *de novo* action in federal court under the Title VII. *See University of Tennessee v. Elliott,* 478 U.S. 788 (1986) (clarifying that the Supreme Court's decision in *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 n.7 (1982), only applies to decisions on the merits rendered by state courts, not state agencies).

Most of the EEOC charges result in dismissal. Out of 75,428 charges received in the fiscal year 2005, the EEOC found reasonable cause only in 5.7%; out of 75,768 in 2006 – in 5.3%. (*See* http://www.eeoc.gov/eeoc/statistics/enforcement/all.cfm). The EEOC dismissed Petitioner's case by adopting the SDHR findings of "no probable cause," App.E-4a and issued a Notice of Right to Sue, giving her an option to file a lawsuit in the Federal Court.

III. Respondent shuffles the order of discrimination charges in Petitioner's SDHR claim and her subsequent Complaint and Appeal filed with the lower courts in a way that it favors Respondent's argument.

Under "Statement of the Case," Respondent erroneously writes: "Petitioner filed a complaint of discrimination (...) in April 2005 (...) alleging disability, age and gender discrimination." *See* Brief, pp.1-2 But Petitioner's SDHR Verified Complaint

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(Cont'd)
Statement of Material Facts. [Emphasis added]. (Dkt. No. 40, 05/28/08). Respondent's Counsel acknowledged that "[t]here is a large volume of paperwork in connection with this case" and it is "trying to narrow the scope [emphasis added] as much as possible." *See* Petition, App.D-279a-280a.

Pursuant to Executive Law, Article 15, Case No. 10105010 (Federal Charge No. 16GA502748) stated:

> I, Grazyna H. Christman (...) charge the above named respondent (...) with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights law) because of age, sex, disability. [Emphasis added]. *See* Case 6:06-cv-1392-GTS-GHL, U.S. District Court NYND, Document 40-5, Plaintiff's Rule 7.1 Response Filed 05/28/08, SDHR 04/13/05 Verified Complained, Exhibit 47, p.2.

Respondent continues: "[i]n November 2006, Petitioner filed an action against Respondent in the United States District Court for the Northern District of New York (...) alleging disability, age and [gender?] [2] discrimination." *See* Brief, p.2.

Petitioner wishes to direct the Court's attention that her Petition for a Writ of Certiorari addresses only the gender and age-based discrimination in violation of Title VII and ADEA, which are two, out of the three initially filed by her former lawyer, Stefan D. Berg, Esq. distinct [emphasis added] discrimination charges; nowhere does the Petition question the lower courts' rulings related to the discrimination based on her perceived disability.

---

[2] Respondent's line reads: "(. . .) alleging disability, age and discrimination." *See* Brief, p.2.

IV. Throughout the entire discovery and motion process, Respondent attempts to dissemble by filing a cross-motion for protective and confidentiality orders in August 2008 and the second motion for protective order in September 2008.

Respondent states in its Brief: "[f]ollowing discovery and motion practice, on March 27, 2009 the District Court, *inter alia,* granted summary judgment to Respondent[.]" *See* Brief, p.2.

But the discovery road was bumpy. When Petitioner became Plaintiff *pro se* in 2008, she learned that (1) her former lawyer never obtained the emails [3] exchanged between Evolo and herself during his 2002-2005 supervision; and (2) Defendant never produced the personnel records requested in 2007 for Grazyna Christman (Petitioner), Martha Dumont and David Raga. (*See* Case 6:06-cv-1392-GTS-GHL, U.S. District Court NYND Document 40-10, Plaintiff's Rule 7.1 Response Filed 05/28/08, Stefan Berg 07/05/07 Letter, Exhibit 97). Petitioner filed an F.R.C.P. Rule 56 motion to continue discovery in May 2008. (Dkt. No. 38, 05/28/08).

Respondent forcefully opposed the release of records, stating that Petitioner "articulated no reason for needing such records" and that the "request (...) is not only irrelevant, but also completely inappropriate and would violate their [Raga, Dumont and Krug's [4]]

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[3] In 2008, Magistrate Judge Lowe ordered that Respondent submit the emails in question. *See* Dkt. No. 20, 02/08/08.

[4] Petitioner asked for Margaret Krug's records in May 2008.

rights to privacy and confidentiality." (Dkt. No. 43, 07/22/08).

These records, however, were relevant. In summer of 2002, Evolo interviewed at least two applicants for a vacated Reinsurance accountant position. Dumont in her forties was a Certified Public Accountant (CPA) with Associate in Reinsurance (ARe) designation; Raga in his thirties - not certified accountant and without ARe designation. Evolo hired the substantially younger, even though less qualified male accountant. Dumont was ultimately hired in Respondent's Financial Reporting supervised by Daniel P. O'Connell. As to Evolo, he apparently wished to have no older females in his department. Petitioner argued that an invidious discrimination was likely in this case, because Evolo was not the same person who hired and fired her; Christman was assigned to his department in January 2002 by Respondent's upper management. Petition, App.D-49a. *See Grady v. Affiliated Central, Inc.*, 130 F.3d 553, 560 (2d Cir. 1997) (an inference of discrimination unlikely when the same person hired and fired the plaintiff). [Emphasis added].

In July 2008, Petitioner filed a motion for sanctions against Respondent's attorney for conduct violating the F.R.C.P. Rule 11(b). (Dkt. No. 46, 07/31/08). Respondent in turn filed a cross-motion for protective and confidentiality orders in August 2008 (Dkt. No. 47, 08/08/08) and a second motion for protective order in September 2008 (Dkt. No. 52, 09/12/08.)

V. Respondent asserts that the Second Circuit and District Court thoroughly analyzed Petitioner's employment discrimination claim under well-established *McDonnell Douglas* burden shifting standard.

First, the District Court analysis does not appear to be thorough as it apparently disregards Petitioner's uncontroverted material facts submitted in the Additional Statement of Material Facts attached to Plaintiff's Rule 7.1 Response to Defendant's Statement of Material. (Dkt. No. 40, 05/28/08). The District Court wrote in its decision: "[f]or the sake of brevity, the Court will only provide a brief recitation of the undisputed material facts on Defendant's motion for summary judgment." *See* Petition, App.B-11a-12a. [5]

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[5] Respondent points: "Petitioner's reproduction of the decisions by the Courts below as Appendices A and B contains typographical errors that are not present in the decisions originally issued by the Courts." Brief, p.2. It fails, however, to provide further explanation. Presuming that "typographical" pertains to typography defined by Webster's Unabridged Dictionary, Copyright © 1999 Random House, Inc. as "general character or appearance of printed matter," Petitioner wishes to assure this Court that she reproduced both decisions faithfully to preserve their original page brakes, numbers and footnotes, while complying with the requirements set forth by the Supreme Court Rule 33 and 34, Document Preparation: Booklet Format; 8½- by 11-Inch Paper Format, and General Requirements, respectively. Any unintentional typing errors inadvertently escaped Petitioner's proof-reading stage. Petitioner is not a professional lawyer, but economist by trade and prepared the Petition to the best of her abilities, entirely on her own from the initial design through composing, printing to the final assembling, while diligently attempting to comply with all applicable Supreme Court Rules. *See* also Footnote No.7.

Respondent states that "[*McDonnell Douglas* burden shifting] standard is uniformly applied throughout the Circuit Courts of Appeals[,]" and quotes a case law for each Circuit, from D.C. through the First to the Eleventh Circuit. *See* Brief, p.3. Respondent argues that the Petition should be denied, because:

> Petitioner has presented no "compelling reasons" for the granting of her [Petition] [6] for a Writ of Certiorari ("Petition") [7]. (...) Specifically, Petitioner has failed to demonstrate that the Second Circuit's April 29, 2010 Summary Order (...) is in conflict with a decision of this Court or another Court of Appeals, implicates an important federal question that has not been settled by this Court, or departs so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Brief, p.1.

Noticeably in its five and a half page long Brief, Respondent repeats twice and almost verbatim the Supreme Court Rule 10. Considerations Governing Review on Certiorari. *See* Brief, pp.1-3.

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[6] Respondent's line reads: "Petitioner has presented no "compelling reasons" for the granting of her Petitioner for a Writ of Certiorari ('Petition')." *See* Brief, p.1.

[7] Respondent brings to this Court attention: "Petitioner acknowledges in her Petition that she did not timely file a petition for rehearing with the Second Circuit." *See* Brief, p.4, Footnote 3. As such, Petitioner deems it necessary to point to circumstances that were beyond her control. Petitioner received *(Cont'd)*

Respondent continues in its Brief:

> [T]here is simply no conflict whatsoever between the Second and Eighth Circuit Courts. (...) [T]he Eighth Circuit in *Lynn* applied the same *McDonnell Douglas* burden-shifting standard applied by the Second Circuit below as follows: "[Lynn's] claims are analyzed under the three-stage burden-shifting framework set forth in *McDonnell Douglass Corp. v. Green* . . . and applied in countless other cases. *See* Brief, p.5.

But Petitioner points that the lower courts failed to modify the fourth prong in *McDonnell Douglas* three-stage burden shifting standard to distinguish between Title VII and ADEA discrimination claims. *See* Petition, p.34. The District Court stated, and the Second Circuit affirmed that:

> "On a motion for summary judgment, claims of discrimination under Title VII, Section 1981, the ADEA, the NYSHRL, and the NYS

(Cont'd)
the Summary Order from the Court of Appeals for the very first time electronically on June 3, 2010 at 1:03 PM. *See* App.E-9a. Had she not called the Second Circuit at 12:54 PM on June 3rd, App.E-12a to follow up on the Appeal status, she would have not known that it had been decided five weeks earlier. The letter sent via USPS apparently was lost in the mail; note, Petitioner resides at the same address since 1994. On June 3rd at 1:02 pm, she called Washington D.C. to learn about the Appeal process in the Supreme Court; she had eight weeks left to prepare and submit a Petition while working a full time job. The Second Circuit mailed another copy of summary order on June 4, 2010. *See* App.E-10a (date-stamped envelope).

> CRL are analyzed under the framework articulated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, (1973)." *Davis v. Avaya, Inc.*, 295 F. App'x 380, 381 (2d Cir. Oct. 2, 2008). Under this framework, in order for a Plaintiff to survive summary judgment, she must first make out a prima facie case of discrimination. *McDonnell Douglas Corp.*, 411 U.S. at 802-804. In order to make out a prima facie case, Plaintiff must demonstrate the following: "(1) membership in a protected class; (2) satisfactory [8] job performance; (3) termination from employment or other adverse employment action; and (4) the ultimate filing of the position with an individual who is not a member of the protected class." *Farias v. Instructional Sys., Inc.* 259 F.3d 91, 98 (2d Cir. 2001).[Emphasis added]. App.B-23a. *See* also Footnotes No.5 and 7.

"Title VII is materially different [from ADEA] with respect to the relevant burden of persuasion[.]" *See Gross v. FBL Financial Services, Inc.*, 129 S. Ct. 2343, 2348 (2009). In *Gross*, the Supreme Court said as follows:

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[6] The courts held that a plaintiff need not demonstrate satisfactory job performance where the alleged discriminator is the same person who judged the plaintiff's job performance inadequate. *See, e.g., Oest v. Illinois Dep't of Corrections*, 240 F.3d 605, 612 (7th Cir. 2001) ("The district court correctly held that the second prong, meeting the employer's legitimate business expectations, was not necessary to the analysis; the people judging Ms. Oest's performance were the same she accused of discriminating against her.").

> In *Price Waterhouse*, a plurality of the Court and two Justices concurring in the judgment determined that once a "plaintiff in a Title VII case proves that [the plaintiff's membership in a protected class] played a motivating part in an employment decision, the defendant may avoid a finding of liability only by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken [that factor] into account."; see also *id.*, at 259-260, 109 S.Ct. 1775 (opinion of White, J.); *id.*, at 276, 109 S.Ct. 1775 (opinion of O'Connor, J.). But as we explained in *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 94-95, 123 S.Ct. 2148, 156 L.Ed.2d 84 (2003), Congress has since amended Title VII by explicitly authorizing discrimination claims in which an improper consideration was "a motivating factor" for an adverse employment decision. See 42 U.S.C. § 2000e-2(m) (providing that "an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was *a motivating factor* for any employment practice, even though other factors also motivated the practice" (emphasis added)); § 2000e-5(g)(2)(B) (restricting the remedies available to plaintiffs proving violations of § 2000e-2(m)). *See* 129 S. Ct. 2343 at 2349.

And furthermore, the Supreme Court stated:

> This Court has never held that this burden-shifting framework applies to ADEA claims. And, we decline to do so now. When conduct-

> ing statutory interpretation, we "must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination." *Federal Express Corp. v. Holowecki*, 552 U.S. ___, ___, 128 S.Ct. 1147, 1153, 170 L.Ed.2d 10 (2008). Unlike Title VII, the ADEA's text does not provide that a plaintiff may establish discrimination by showing that age was simply a motivating factor. Moreover, Congress neglected to add such a provision to the ADEA when it amended Title VII to add §§ 2000e-2(m) and 2000e-5(g)(2)(B), even though it contemporaneously amended the ADEA in several ways, see Civil Rights Act of 1991, § 115, 105 Stat. 1079; id., § 302, at 1088. *Id.*

The ample record evidence that Petitioner presented to the SDHR and EEOC in 2005, and the lower courts in 2006-2009, proves that her gender played a motivating part in the adverse employment decision and casts doubt whether this employment decision was made for a legitimate business reason. The evidence clearly shows that the female Petitioner and the similarly-situated male employees have not [emphasis added] been treated the same way by Respondent. Since Respondent has not treated the female Petitioner and the similarly-situated male employees the same way, it needs to explain persuasively "why not" at a jury trial. *See Lynn v. Deaconess Med. Ctr.-West Campus*, 160 F.3d 484, 489 (8th Cir. 1998) ("Although Deaconess may ultimately be able to offer a plausible explanation for its treatment of Lynn and its other nurses, these are matters to be decided at trial and not by summary judgment[.]").

CONCLUSION

Petitioner understands and has utmost respect for the fact that "[r]eview on a writ of certiorari is not a matter of right, but a judicial discretion" as indicated in the Supreme Court Rule 10. But like Christman-Employee, who on February 4, 2005 wrote that "[she] feel[s] confident that if someone [at UNIG-Employer] took a moment to look at the attached [memo], it would help to put things in perspective, (Petition, App.D-116a), Christman-now-Petitioner still has trust that her perseverance will cause the truth to prevail.

For all the foregoing reasons, Respondent's Brief in Opposition to the Petition for a Writ of Certiorari should be dismissed.

Respectfully submitted,

GRAZYNA H. CHRISTMAN
Pro Se
450 Elmdale Avenue
Utica, New York 13502
(315) 733-6687

APPENDIX

Appendix E

Utica National Insurance Group
Respondent's Overtime Payment Check & Envelope

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND NOT A WHITE BACKGROUND 50-42
213

[Logo] UTICA NATIONAL INSURANCE GROUP
UTICA NEW YORK

MARINE MIDLAND BANK UTICA, NEW YORK

[Bank Encoding] HSBC BANK 021300420
BUFFALO, N.Y. 162835

CHECK NUMBER No.162835 DATE 02-22-2005

PAY TO THE ORDER OF GRAZYNA H. CHRISTMAN

PAY THIS AMOUNT ******550.57

01 U1 0114 04 01140
GRAZYNA H. CHRISTMAN
450 ELMDALE AVENUE
UTICA NY 13502

s/ J Douglas Robinson
s/ A Paolozzi

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK – HOLD AT AN ANGLE TO VIEW

⑈162835⑈ ⑆021300420⑆ [Account Number Redacted]

Appendix E

Utica National Insurance Group
Respondent's Overtime Payment Check & Envelope

[Logo] UTICA NATIONAL INSURANCE GROUP
Insurance that starts with you ®
www.uticanational.com

[Stamp] MAILED SYRACUSE NY DROP
SHIPMENT AUTHORIZATION 17 PO BOX 530
UTICA NY 13503
[Stamp]PRESORTED FIRST CLASS
[Stamp] FEB 23 '05 METER 7138312 ≡ 0.53^{4}
U.S. POSTAGE

Ms. Grazyna Christman
450 Elmdale Ave
Utica, NY 13502

A-GPSMM 13502 [Barcode]

Appendix E

State of New York Executive Department
Division of Human Rights

INTER-OFFICE MEMORANDUM, p.5

Final Investigation Report and Basis of
Determination SDHR
Case No. 10105010

Grazyna H. Christman v. Utica National Insurance
Group

III. BASIS FOR DETERMINATION

The complainant was one of three accountants supervised by the same Supervisor. Although she was the only female and was older than the other two males in the unit, the investigation did not reveal that she was subjected to disparate treatment with regards to tasks and performance standards.

The record shows that between August, 2003 and January 2005 the complainant was counseled on at least six occasions for unsatisfactory performance and given suggestions for improvement. Additionally two of the male coworkers were both evaluated on the same criteria; and one of them initially received a lower performance rating than the complainant.

The complainant was able to take medical leave to address her medical condition on November 11, 2004 and returned to work December 27, 2004. There is no indication that the complainant's disability was in any way related to the respondent's decision to terminate her employment on February 21, 2005, for

Appendix E

State of New York Executive Department
Division of Human Rights

INTER-OFFICE MEMORANDUM, p.5

failure to improve her unsatisfactory work performance.

Reviewed & Approved: s/
Carmen Z. Quinones
Human Rights Specialists II

IV. DETERMINATION

Based on the foregoing, I find no probable cause to support the allegation of the complaint.

s/
Rey F. Torres
Regional Director

Appendix E

State of New York Executive Department
Division of Human Rights

COMPLAINANT EXHIBIT CONTROL SHEET

Number	Description	Date Received
	[handwritten]	
	Complainant's rebuttal	
	with attachments	
	too many to list!	

Appendix E

State of New York Executive Department
Division of Human Rights

NYS DHR
EVENT HISTORY WITH COMMENTS, p.4

Events
Comments:

Unit:	Regional
Type:	Rebuttal Received
SubType:	
Date:	Tue 8/9/2005
Status:	Completed
Date Completed:	8/9/2005
Assigned:	
Comments:	

Unit:	Rebuttal
Type:	Complainant Contact
SubType:	Mail
Date:	Thu 8/11/2005
Status:	Completed
Date Completed:	8/11/2005
Assigned:	Linda A. Pitts
Comments:	received additional documents to be included with rebuttal

Unit:	Regional
Type:	Respondent Contact
SubType:	Mail
Date:	Wed 1/18/2006
Status:	Completed
Date Completed:	1/18/2006
Assigned:	Carmen Z. Quinones

Appendix E

State of New York Executive Department
Division of Human Rights

NYS DHR
EVENT HISTORY WITH COMMENTS, p.4

Comments:	Mailed to respondent's attorney a copy of the complainant's rebuttal, 405 pages at .25 per page [$101.25]

Unit:	Regional
Type:	Respondent Contact
SubType:	Mail
Date:	Wed 2/15/2006
Status:	Completed
Date Completed:	2/15/2006
Assigned:	Carmen Z. Quinones;Linda A. Pitts
Comments:	received ck in the amount $101.25 to cover copies of Cp's rebuttal documents

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Unit:	Commissioner
Type:	Correspondence Received, response required
SubType:	Mail
Date:	Mon 3/20/2006
Status:	Completed
Date Completed:	4/5/2006
Assigned:	Letitia Akens
Comments:	

Unit:	Regional
Type:	Comparative Data Reviewed
SubType:	
Date:	Thu 6/15/2006

Appendix E

State of New York Executive Department
Division of Human Rights

NYS DHR
EVENT HISTORY WITH COMMENTS, p.4

Status: Completed
Date Completed: 6/15/2006
Assigned:
Comments:

Report run on 6/16/2006 By: rtorres Page 4

Appendix E

U.S. Court of Appeals for the Second Circuit
Connie Mazariego Email 06/03/10, p.1

GC

From: <Connie_Mazariego@ca2.uscourts.gov>
To: "G C" <graz15@msn.com>
Sent: Thusrday, June 17, 2010 8:43 AM
Subject: Re: Summary Order 09-1385-cv
Good morning,
The above decision was issued by summary order and summary orders are not published.

"G C" <graz15@msn.com>
06/16/2010 04:23 PM
To <Connie_Mazariego@ca2.uscourts.gov>
cc
Subject: Re: Summary Order 09-1385-cv
Good afternoon Ms. Mazariego, and thank you for the email.
Could you please tell me how to find whether the above order/opinion of the United States court of appeals is:
(1) reported and if yes, where, or
(2) has been designated for publication, but is not yet reported; or
(3) is unpublished?
Thank you for your time,
Grazyna Christman

- - - - - Original Message - - - - -
From: Connie_Mazariego@ca2.uscourts.gov
To: graz15@msn.com
Sent: Thursday, June 03, 2010 1:03 PM
Subject: Summary Order 09-1385-cv

Appendix E

U.S. Court of Appeals for the Second Circuit
Date Stamped Envelope 06/04/10

CLERK'S COURT
UNITED STATES COURT OF APPEALS
UNITED STATES COURT HOUSE
FOLEY SQUARE
NEW YORK, N.Y. 10007
[Stamp] UNITES STATES POSTAGE
[Logo] PITNEY BOWES
02 1A
000 460 4793
$00.61⁰
JUN 04 2010
MAILED FROM ZIP CODE 10007

[Address Window]

[Barcode]

Appendix E

Petitioner's Verizon Telephone Bill, p.3

verizon Page 3 of 5

Phone Number	Account Number	Date Due
315-733-6687	[Redacted]	Jul 26, 2010

Questions? Visit Verizon.com or call 1-800-VERIZON (1-800-837-4966).

Changes in Service and Partial Month

Includes all partial month charges and credits including those for promotions and bundles as well as activation and installation charges. Bill cycles vary by products. See explanation under Bill Cycle dates on page two.

Breakdown of Charges Jul 1 -- Jul 31

Voice Services

Regional Calls (see Call Details) 1.47

Flat Rate Service 17.67

Verizon Calling Card .00

Flat Rate Usage 7.20

Touch-tone .00

Blocking or Prompt Repeat Dialing Feature .00

Call Trace Denial .00

Repeat Dialing Denial .00

*69 Denial .00

All Call Blocking .00

Blocking for Pay Per Use Three-Way calling .00

VLD Itemized Calls (See Call Detail) 19.80

VLD Federal Universal Service 2.28

VLD International Choice Plan with City Rates 4.99

Total Voice Service $53.41

Change in Service and Partial Month

Entire Service Out Credit 5 Days Jun 20-Jun 22 -4.31

Out of Service Credit FCC Line Charge Jun 3-20-Jun 22 -.64

Appendix E

Petitioner's Verizon Telephone Bill, p.3

Total Change in Service and Partial Month -$4.95
Taxes, Fees & Other Verizon Charges
Voice
Federal Tax .83
NY State/Local Sales Tax 3.57
VLD NY State/Local Sales Tax .58
911 Surcharge .35
Federal USF Surcharge .87
Surcharge(s) 1.08
FCC Line Charge 6.39
VLD NY Gross Receipts Tax Surcharge .69
Total Taxes, Fees & Other Verizon Charges $14.36
Call Detail

Long Distance Itemized Calls

Date	Time	Place	Number	Period	Minutes	Amount
Domestic Calls: 315-733-6687						
Jun 3	12:54 pm	New York	NY	212-857-8550		
				Peak	8	3.20
Jun 3	1:02 pm	Washington	NC	202-479-3000		
				Peak	2	.80
Jun 3	1:04 pm	Washington	DC	202-479-3000		
				Peak	5	2.00
Jun 3	1:09 pm	New York	NY	212-857-8593		
				Peak	1	.40
Jun 3	1:55 pm	New York	NY	212-857-8560		
				Peak	1	.40
Jun 3	1:56 pm	New York	NY	212-857-8593		
				Peak	1	.40
Jun 9	10:17am	Washington	DC	202-479-3038		
				Peak	1	.40

173 (5)

No. 10-139

Supreme Court, U.S.
FILED
OCT 25 2010
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,
Petitioner

v

UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

GRAZYNA H. CHRISTMAN
Pro Se
450 ELMDALE AVENUE
UTICA, NEW YORK 13502
(315) 733-6687

GROUNDS FOR PETITION FOR REHEARING

This Court grants the petitions for rehearing only in exceptional circumstances. Petitioner respectfully submits that the ramifications of the Court's decision, which may not have been fully briefed at the merits stage, cry out for a second look. First, absent this Court's granting the petition, there is no deterrent for Respondent to abstain from its discriminatory practices against other older female employees. Respondent is not some small, locally operated business, but a large, nationwide corporation. The Utica National Insurance Group, Inc. has its corporate headquarters in New Hartford, NY and numerous regional offices all over the United States: 1) Eastern Regional Office & Specialized Products Division, and Errors & Omissions, both located in Utica, NY; 2) New York Metropolitan Regional Office in Jericho, NY; 3) Middle Atlantic Regional Office in Richmond, VA; 4) Republic-Franklin Insurance Company in Columbus, OH; 5) New England Regional Office in Wakefield, MA; 6) Southeastern Regional Office in Atlanta, GA, and 7) Southwestern Regional Office in Richardson, TX. [1] The Utica National employs one thousand three hundred twenty five (1,325) employees across the regional offices. [2] The Utica National has over $2.0 billion in assets, and an "A-" or "Excellent" rating from the A.M. Best Company. In 2009, the Utica National had the direct written premium of $583

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[1] Respondent's website at http://www.uticanational.com/Contact/ContactForm.asp.

[2] *Ibid* at http://www.uticanational.com/CareerOpps/HR_Main.asp.

million, the policyholders' security fund of $766.5 million, and the policyholders' dividends of $11.9 million. [3] Respondent prides itself on being "among the top 100 insurance organizations in the nation" and providing "top-quality coverages and a commitment to service that is unsurpassed [emphasis added] in the insurance industry." [4]

Respondent, however, cannot acknowledge being equally committed to observing the employment laws which prohibit age and gender discrimination, inasmuch as it wrongfully put an end to Petitioner's nearly fifteen years long career, leaving her psychologically and financially scarred for the remainder of her life. [5] Being fired at fifty two is a traumatic experience; being fired for no just reason, while called into the Human Resources and forbidden to go back to your desk to retrieve your purse and coat, takes that trauma to the extreme level. "Getting fired during your peak earning years has always been scary. You'd scramble for a few months, but you'd find something. Today it's different. Get fired and you can scramble for years--and still find nothing. Welcome to the cold new world of the

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[3] *Ibid* at http://www.uticanational.com/company/vitalstatistics.asp.

[4] *Ibid* at http://www.uticanational.com/Company/AboutUN_home.asp.

[5] Petitioner held two jobs simultaneously since 1996: full-time at Utica National and part-time at Fleet Bank, currently Bank of America. After termination in 2005, she assumed a full-time position at the bank, but was unsuccessful finding an accounting job comparable to her previous employment with Respondent.

prematurely, involuntarily retired." [6]

Secondly,. absent this Court's granting the petition, there is no deterrent for Respondent's counsel to abstain from its deceptive and unethical defense practices in the future legal proceedings. In the F.R.C.P. Rule 11 Motion for Sanctions against Defendant's Attorney for Conduct Violating Rule 11(b), Petitioner explained:

> In this civil action brought against Utica National Insurance Group, Inc., Defendant pursued Motion for Summary Judgment even though it was aware of disputed material facts and stated in its Memorandum of Law, that "there is no genuine issue as to any material fact requiring a [trial] and Defendant is entitled to judgment as a matter of law." Defendant ignored the supporting evidence and documents that were already in record and asserted that Plaintiff had no evidence. Plaintiff's evidence was comprised of documents previously submitted by both parties to NYS Division of Human Rights, Depositions Transcripts and Defendant's e-mails, all too familiar to Defendant. *See* Dkt. No. 46, pp. 6-7, 07/31/08.

For that matter, "[t]he nonmoving party may defeat a motion for summary judgment that asserts that the

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[6] From "50 and Fired" article by John Helyar printed in May 16, 2005 Fortune magazine; also available at http://money.cnn.com/magazines/fortune/fortune_archive/2005/05/16/8260148/index.htm.

nonmoving party has no evidence by calling the court's attention to supporting evidence already in the record that was overlooked or ignored by the moving party." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 332 (1986).

During the deposition in November 2007, Respondent's counsel and Stefan D. Berg, Esq., Petitioner's former lawyer "[s]tipulated that all documents submitted to the Division of Human Rights by either party are admissible." *See* Case 6:06-cv-1392-GTS-GHL, U.S. District Court NYND, Document 40-2 (Plaintiff's Rule 7.1 Response filed 05/28/08, Deposition Transcript Christman, Exhibit 13, p. 8:3-5; Plaintiff's Additional Statement of Material Facts, p. 64, ¶ 96). In 2007, Respondent's counsel admitted that "[t]here is a large volume of paperwork [documentation] in connection with this case," but it narrowed (sic) the documents only "to the period of time from the date of [Petitioner's] written warning on January 6, 2005 through her termination date of February 21, 2005 (...) to focus [Respondent's] attention on [Petitioner's] job performance during that period of time in order to justify [falsely] that termination was the appropriate employment decision (as opposed to further warnings, probation, suspension, etc.)." *See* Case 6:06-cv-1392-GTS-GHL, U.S. District Court NYND, Document 49-3 (Plaintiff's Opposition to Defendant's Cross-Motion for Protective and Confidentiality Order Filed 09/02/08, Defendant's 11/01/07 Email, Exhibit 112 reproduced in Appendix D-279a-280a). Respondent's counsel chose to disregard all of the record evidence previously submitted to the Division and clearly showing that from 2003 to 2005, the female Petitioner and the similarly situated,

substantially younger male employees were treated by Respondent disparately in terms of discipline and learning opportunities, that gender played a motivating part in Respondent's decision to terminate Petitioner's employment, and that Petitioner's "poor job performance" was merely a pretext to cover up Respondent's discrimination.

CONCLUSION AND PRAYER

For all the foregoing reasons, Petitioner respectfully requests and prays that the Court reconsider its decision, grant this Petition for Rehearing to ensure that not another employee is terminated wrongfully by Respondent, that Respondent's Mission [7] posted on its website is not an empty slogan, but the statement by which Respondent stands, and Petitioner is given a fair chance to be righteously compensated for the immense harm, which Respondent inflicted on her intentionally.

Respectfully submitted,

GRAZYNA H. CHRISTMAN
Pro Se
450 Elmdale Avenue
Utica, New York 13502
(315) 733-6687

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[7] The Utica National's Mission statement reads: "We will meet the needs of our employees by providing security and opportunity to those employees willing and able to meet the increasing demands of the evolving financial services marketplace." Respondent's website at http://www.uticanational.com/company/mission.

CERTIFICATE OF GOOD FAITH

No. 10-139

GRAZYNA H. CHRISTMAN,
Petitioner

v.

UTICA NATIONAL INSURANCE GROUP, INC.,
Respondent

Pursuant to Rule 44 of the Rules of the Supreme Court of the United States, I hereby certify that the Petition for Rehearing is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed on October 13, 2010

/s/
GRAZYNA H. CHRISTMAN
Pro Se
450 Elmdale Avenue
Utica, New York 13502
(315) 733-6687

HOPE WILLIAMS
Notary Public, State of New York
Reg. #01WI6224610
Qualified in Oneida County
My Commission Expires July 06, 2014
/s/